Supreme Court, U. S.
FILED
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MICHAEL RODAK, JR., CLERK

JOINT APPENDIX

IN THE

Supreme Court of the United States

October Term, 1979

No. 78-1487

FORD MOTOR CREDIT COMPANY, *et al.*,

Petitioners,

—*v.*—

DENNIS MILHOLLIN, *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED MARCH 27, 1979

CERTIORARI GRANTED JUNE 18, 1979

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FORD MOTOR CREDIT COMPANY and DEE THOMASON FORD v. DENNIS MILHOLLIN and MICHELLE MILHOLLIN

RELEVANT DOCKET ENTRIES

April 15, 1975	Complaint filed
June 13, 1975	Answer of Ford Motor Credit Co. filed
June 16, 1975	Answer of Dee Thomason Ford Co. filed
August 8, 1975	Ford Motor Credit Co.'s Answers to Interrogatories filed
October 20, 1975	Motion of Plaintiffs for Summary Judgment filed
October 20, 1975	Affidavit of Dennis Millhollin and Michelle Millhollin filed
November 21, 1975	Motion of Ford Motor Credit Co. for Summary Judgment filed
November 21, 1975	Affidavit of L. B. Plummer filed
December 5, 1975	Motion of Dee Thomason Ford Co. for Summary Judgment filed
December 15, 1975	Record of hearing on Plaintiffs' Motion for Summary Judgment and Ford Motor Credit Co.'s Motion for Summary Judgment; Order taking under advisement
December 19, 1975	Affidavit of Peter J. Deckers filed
December 22, 1975	Record of hearing on Dee Thomason Ford Co.'s Motion for Summary Judgment; Order taking under advisement
April 7, 1976	Recommendation and Order, denying Defendants' Motions for Summary Judgment and granting

	Plaintiffs' Motion for Summary Judgment, filed
April 14, 1976	Motion of Ford Motor Credit Co. for Reconsideration filed
April 19, 1976	Motion of Dee Thomason Ford Co. for Reconsideration filed
May 3, 1976	Record of hearing on Ford Motor Credit Co.'s Motion for Reconsideration; Order taking under advisement
May 24, 1976	Record of hearing on Dee Thomason Ford Co.'s Motion for Reconsideration; Order taking under advisement
June 25, 1976	Order denying Defendants' motions to modify and/or vacate judgment filed and entered
June 25, 1976	Summary Judgment for Plaintiffs in sum of $1,000.00 general damages and $750.00 attorney's fees filed and entered
June 25, 1976	Order setting Plaintiffs' attorney's fees at $750.00 filed and entered
July 21, 1976	Notice of Appeal by Defendants filed
August 3, 1976	Notice of Cross Appeal by Plaintiffs filed
March 29, 1978	Order consolidating appeals filed
December 28, 1978	Opinion filed and Judgment filed and entered
June 26, 1979	Supreme Court Order of June 18, 1979 granting certiorari filed

COMPLAINT TO ENFORCE CIVIL LIABILITY UNDER TRUTH IN LENDING ACT

(Filed April 15, 1975)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

DENNIS MILLHOLLIN and MICHELLE MILLHOLLIN,

Plaintiffs,

vs.

FORD MOTOR CREDIT CO., a corporation, and DEE THOMASON FORD, a corporation,

Defendants.

CIVIL ACTION NO. 75-334

COMPLAINT

COUNT I

1. This is an action for money damages. This complaint is filed and these proceedings are instituted under the Truth in Lending Act, 15 U.S.C.A. Section 1601 et seq (hereinafter called "Act") to recover statutory damages, reasonable attorney's fees, and costs of suit by reason of the defendants' violation of the Act and Federal Reserve Regulation Z, 12 C.F.R. Section 226 (hereinafter called "Regulation Z"), adopted by the Board of Governors of the Federal Reserve System pursuant thereto. The jurisdiction of this Court is invoked pursuant to Section 130(e) of the Act, 15 U.S.C.A., Section 1640(e), and 28 U.S.C.A. Section 1337.

2. The plaintiffs, DENNIS MILLHOLLIN and MICHELLE MILLHOLLIN, are natural persons, both residing at 3727 S.E. 162nd., Portland, Oregon 97236.

3. The defendant, FORD MOTOR CREDIT CO., is a foreign corporation engaged in the business of financing automobile purchases at 4309 N.E. Tillamook, P.O. Box 13070, Portland, Oregon. At all times relevant hereto, defendant FORD MOTOR CREDIT CO. in the ordinary course of its business, regularly extended, offered to extend, arranged and offered to arrange the extension of consumer credit, for which a finance charge is or may be imposed, or which is payable in more than four (4) installments.

4. The defendant, DEE THOMASON FORD, is an Oregon corporation engaged in the business of selling automobiles at 309 South State Street, Lake Oswego, Oregon. At all times relevant hereto, the Defendant DEE THOMASON FOOD [*sic*] in the ordinary course of its business, regularly extended, offered to extend, arranged and offered to arrange the extension of consumer credit, for which a finance charge is or may be imposed, or which is payable in more than four (4) installments.

5. On or about July 12, 1974, Plaintiff DENNIS MILLHOLLIN entered into a consumer credit transaction with Defendants, which transaction consisted of the purchase from Defendant DEE THOMASON FORD of a 1973 Ford Pinto Wagon, for a cash price of $3,098.00, a finance charge of $711.84, a total of payments of $3,084.64, and a deferred payment price of $3,984.64. This purchase was financed in the regular course of business by Defendant FORD MOTOR CREDIT CO., and the contract evidencing this purchase was assigned to Defendant FORD MOTOR CREDIT CO. in the regular course of business.

6. A true and accurate copy of the contract evidencing this purchase is attached hereto, marked "Plain-

tiffs' Exhibit A," and by this reference is incorporated herein.

7. In the course of this transaction, Defendants violated the provisions of §121 of the Act, 15 U.S.C.A. §1631, and §226.8 and §226.6 of Regulation Z, in the following respects:

a) By failing to clearly identify on the front of the contract FORD MOTOR CREDIT CO. as a creditor in the transaction, as required by §226.6(d) and §226.8(a) of Regulation Z.

b) By failing to disclose on the front of the contract that the Defendants had the option of declaring the entire unpaid balance of the contract immediately due and payable in the event of a default or late payment by the Plaintiffs, as required by §128(a)(9) of the Act, 15 U.S.C.A. §1638(a)(9), and §226.8(a) and §226.8(b)(4) of Regulation Z.

c) By failing to disclose clearly and conspicuously and in a manner which did not mislead, confuse or contradict, that Plaintiffs were required to obtain Physical Damage Insurance, as required by 15 U.S.C.A. §1631(a) and §226.4(a)(6), §226.6(a) and §226.6 (c) of Regulation Z.

d) By failing to describe or identify the type of security interest retained or acquired by Defendant FORD MOTOR CREDIT CO., as required by §128 (a)(10) of the Act, 15 U.S.C.A. §1638(a)(10) and §226.8(b)(5) of Regulation Z.

8. As a result of the aforesaid violations of the Act, the Defendants are liable to Plaintiff DENNIS MILLHOLLIN in the sum of $1,000.00, plus costs and reasonable attorney's fees, as provided by Section 130(a) of the Act, 15 U.S.C.A. §1640(a).

COUNT II

9. Plaintiffs incorporate the allegations in paragraphs 1, 2, 3, 4, 6 and 7 above, with the same force and effect as if herein set forth.

10. On or about July 12, 1974, Plaintiff MICHELLE MILLHOLLIN entered into a consumer credit transaction with Defendants, which transaction consisted of the purchase of a 1973 Ford Pinto Wagon from Defendant DEE THOMASON FORD for a cash price of $3,098.00, a finance charge of $711.84, a total of payments of $3,084.64, and a deferred payment price of $3,984.64. This purchase was financed in the regular course of business by Defendant FORD MOTOR CREDIT CO., and the contract evidencing this purchase was assigned to Defendant FORD MOTOR CREDIT CO. in the regular course of business.

11. As a result of the aforesaid violations of the Act, the Defendants are liable to Plaintiff MICHELLE MILLHOLLIN in the sum of $1,000.00, plus costs and a reasonable attorney's fee, as provided by Section 130(a) of the Act, 15 U.S.C.A. §1640(a).

WHEREFORE, Plaintiffs pray as follows:

a) that in regard to Plaintiff DENNIS MILLHOLLIN, pursuant to §130(a) of the Truth in Lending Act, judgment be entered in his favor and against the Defendants, and each of them, in the sum of $1,000.00;

b) that in regard to Plaintiff MICHELLE MILLHOLLIN, pursuant to §130(a) of the Truth in Lending Act, judgment be entered in her favor and against the Defendants, and each of them, in the sum of $1,000.00; and

c) for reasonable attorney's fees as provided for under §130(a) of the Truth in Lending Act; for costs; and for such other and further relief as may be just and proper.

LEGAL AID SERVICE—Multnomah
Bar Association, Inc.
By: /s/ Richard A. Slottee
RICHARD A. SLOTTEE
Of Attorneys for Plaintiffs

8–9

...OR ON AUTOMOBILE RETAIL INSTALMENT CONTRACT ... 7-12-74

...Buyer) - Name and Address (Include ... County and Zip Code)

T. Lewis Millhollin
16900 SE Alder
Portland, Oregon 97233

ACCOUNT NO. ...

Seller - Name and Address

Alex Thomason Ford
309 S. State
Lake Oswego, Oregon

Buyer (which means the undersigned Buyers and Co-Buyers, jointly and severally) having been quoted both a deferred payment price and a lesser cash price hereby purchases from Seller on a time price basis, upon the terms and conditions set forth on the face and reverse sides hereof, the following property (hereinafter called the "Property") delivery and acceptance of which in good order hereby are acknowledged by Buyer.

New or Used	Year and Make	Series	Body Style	No. Cyl	If Truck Ton Capacity	Manufacturer's Serial Number	Use For Which Purchased
Used	1973 Ford	Pinto	Wag	4		3R12X140838	☐ Personal ☐ Business ☐ Agriculture

INCLUDING: ☐ Radio ☐ Air Conditioner ☐ Automatic Transmission ☐ Power Steering ☐ Power Brakes ☐ Power Seats ☐ Power Windows ☐

DESCRIPTION OF TRADE IN

1966 Ford (Year and Make) — $ 300.00 (Gross Allowance)
— (Serial Number) — $ -0- (Amount Owing)

OPTIONAL INSURANCE

Buyer authorizes Seller to obtain the following insurance coverages:

(a) **Physical Damage Insurance:** Coverages checked below for a term of [illegible] months (or for such shorter term as the insurer to whom Seller shall apply therefor will provide for the amount included herein) from the date hereof covering accidental physical damage to the Property based on actual cash value of the time of loss not to exceed policy limits payable to Buyer or Seller as interests may appear:

☐ Comprehensive ☐ Fire-Theft & Combined Additional Coverage
☐ $ ___ Deductible Collision ☐ Towing & Labor Costs ($25.00 Limit) — $ [illegible] (a)

(b) **Credit Life Insurance** on the life of Noreen Millhollin (Insured Person) for the term of this contract.

☐ Provided under Ford Life Insurance Company's Group Policy No. 2200 in accordance with the "Credit Life Insurance Eligibility" section below.
Insured Buyer/Age 19
☐ Provided by Central State in accordance with the separate Application, Notice, Certificate or Policy delivered to Buyer this date.
$ [illegible] (b)

(c) **Credit Accident and Health or Disability Insurance** on Noreen Millhollin (Insured Person) for the term of this Contract.

Provided by ___ in accordance with the separate Application, Notice, Certificate or Policy delivered to Buyer this date. $ 117.27 (c)

(d) **Other Optional Insurance** ___ (Identify) $ -0- (d)
Provided by ___
for a term of ___ months.

Total Cost of Optional Insurance ..... $ 172.80

NOTICE TO BUYER: (1) You are not required to obtain the Credit Life and/or Credit Accident and Health or Disability Insurance for which a charge is indicated above and such is not a factor in the Seller's approval of this credit. (2) You have the right to choose the person through whom the Physical Damage Insurance required under this contract is to be obtained. ACKNOWLEDGING the foregoing, BUYER requests and authorizes SELLER to obtain each insurance coverage for which an amount is included above.

[illegible] Lewis Millhollin 7-12-74
(Buyer)

(Cost of insurance to be included only if signed by all named Buyer and dated)

LIABILITY INSURANCE COVERAGE FOR BODILY INJURY AND PROPERTY DAMAGE CAUSED TO OTHERS IS NOT INCLUDED.

Credit life insurance under the [illegible] Company's Group Policy No. 2200 is available only on the life of one natural person who is obligated to make payments under this retail instalment instrument and who is under the age of 60 on the date hereof. Benefits will be limited to a refund of premiums if there is no person eligible for such insurance, or if death results from suicide within two years from the date hereof. For details see Notice of Proposed Group Credit Life Insurance on reverse side of Buyer's Copy.

The foregoing contract hereby is accepted by the Seller and assigned to Ford Motor Credit Company in accordance with the terms of the Assignment set forth on the reverse side hereof.

Seller: Alex Thomason Ford
By: [illegible] Title: Mgr

FOR SELLER'S USE ONLY

DETAILS OF TRANSACTION

(1) Cash Price		$ 3098.00 (1)
Cash Down Payment	$ 400.00	200.00 Due 7-12-74
Trade In (See Opposite)	$ 300.00	
(2) Total Down Payment		$ 960.00 (2)
(3) Unpaid Balance of Cash Price (Difference between Items 1 & 2)		$ 2198.00 (3)
(4) Other Charges		
Optional Insurance (See Opposite)	$ 172.80	
Official Fees	$ —	
Taxes (Not included in Cash Price)	$ —	
License, Title & Registration Fees	$ 2.00	
Total Other Charges		$ 174.80 (4)
(5) Unpaid Balance – Amount Financed		$ 2372.80 (5)
(6) FINANCE CHARGE		$ 711.84 (6)
(7) ANNUAL PERCENTAGE RATE 17.52 % (7)		
(8) Total of Payments (Sum of Items 5 & 6)		$ 3084.64 (8)
(9) Deferred Payment Price (Sum of Items 1, 4 & 6)		$ 3984.64 (9)

(10) **Payment Schedule:** Buyer hereby agrees to pay to Seller the Total of Payments (Item 8 above) in 35 monthly instalments of $ 85.84 each and one final instalment of $ 85.84 on the like day of each month commencing 8-19 19[illegible], or, if no date is specified, one month after the date of this contract, plus a pickup payment of $ 200.00 on which no finance charge is assessed, due on 8-12-74 19[illegible]

(11) **Balloon Payment(s)** 200.00 on 8-12-74 $ ___ on ___
(Insert amount of each payment that is more than twice the amount of any otherwise regularly scheduled equal payment)
A balloon payment may be refinanced only upon such terms and conditions as the then parties to this contract may agree as of its due date.

(12) **Delinquency Charges:** Buyer hereby agrees to pay a delinquency charge on each instalment in default for more than 10 days in the amount of 5% thereof or $5.00, whichever is less, plus such expenses incurred by Seller in effecting collection hereunder as may be allowed by law.

(13) **Security Interest:** Seller shall have a security interest under the Uniform Commercial Code in the Property (described above) and in the proceeds thereof to secure the payment in cash of the Total of Payments and all other amounts due or to become due hereunder.

(14) **Prepayment Rebate:** Buyer may prepay his obligations under this contract in full at any time prior to maturity of the final instalment hereunder, and, if he does so, shall receive a rebate of the unearned portion of the Finance Charge computed under the sum of the digits method after first deducting an acquisition fee of $15.00. No rebate will be made if the amount is less than $1.00.

(15) **Additional Terms and Conditions:** The additional terms and conditions set forth on the reverse side hereof are a part of this contract and are incorporated herein by reference.

NOTICE TO THE BUYER

Do not sign this contract before you read it or if it contains any blank space except that if delivery of the vehicle is to be made to you after this contract is signed, the serial number or other identifying information and the due date of the first instalment may be filled in at the time of delivery.
You are entitled to a copy of this contract.
You have the right to pay off in advance the full amount due and to obtain a partial refund of the finance charge.

Buyer acknowledges receipt of a true and completely filled in copy of this

RETAIL INSTALMENT CONTRACT.

Buyer: T. Lewis Millhollin
Co-Buyer: Michelle L. Millhollin

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ADDITIONAL TERMS AND CONDITIONS

6. ASSIGNMENT
The original Seller may assign this contract and his assignee shall acquire all of his interest in this contract and the Property and shall be entitled to all the rights and privileges of Seller hereunder. After Buyer receives notice of any such assignment, Buyer shall make all payments hereunder directly to the holder hereof and the original Seller shall not be the agent of the holder for transmission of payments or otherwise. Buyer shall not transfer or otherwise dispose of any interest in this contract or the Property.

17. USE OF PROPERTY – WARRANTIES
Buyer shall keep the Property free from all encumbrances, and any amount that may be paid by Seller in release or discharge thereof shall be paid by Buyer to Seller forthwith upon demand with interest at the highest lawful contract rate. Buyer shall not use the Property illegally, improperly or for hire (unless stated herein) and shall not remove the Property from the county of his residence without the written permission of Seller. No representation, promise or warranty, express or implied, has been made with respect to the merchantability, suitability or fitness for purpose of the Property or otherwise unless the same is endorsed hereon in writing or is contained in a separate written instrument signed by the original Seller. Buyer will settle directly with the original Seller all claims concerning the Property or its use or operation.

18. RISK OF LOSS – INSURANCE
The Property shall be at Buyer's risk. Buyer shall obtain and maintain at his own expense for so long as any amount remains unpaid hereunder insurance protecting the interests of Buyer and Seller against loss, damage or destruction of or to the Property in such forms and amounts as Seller may require. The inclusion of a charge for insurance herein shall not relieve Buyer of such obligation but only authorizes Seller to attempt to obtain the requested coverages on Buyer's behalf through an authorized agent; provided, if Seller is unable to obtain the requested coverages for the term indicated for the amount included herein, Seller may (i) obtain such coverages for such term, if any, as the insurance carrier to whom Seller shall apply therefor will provide for such amount, or (ii) credit such amount to the final maturing instalments hereunder in inverse order of maturity or as otherwise required by law.
If Buyer fails to obtain or maintain such insurance, or fails to furnish satisfactory evidence thereof upon request, Seller may, but shall not be required to, and without prejudice to his rights hereunder if he does not, obtain such insurance protecting either the interests of Buyer and Seller or the interests of Seller only. In such event, Buyer agrees to reimburse Seller for the cost thereof forthwith upon demand together with interest thereon at the highest lawful contract rate.

19. DEFAULT
Time is of the essence of this contract. In the event Buyer defaults in any payment, or fails to obtain or maintain the insurance required hereunder, or fails to comply with any other provision hereof, or a proceeding in bankruptcy, receivership or insolvency shall be instituted by or against Buyer or his property, or Seller deems the Property in danger of misuse or confiscation, or Seller otherwise reasonably deems the indebtedness or the Property insecure, Seller shall have the right to declare all amounts due or to become due hereunder to be immediately due and payable and Seller shall have all the rights and remedies of a Secured Party under the Uniform Commercial Code, including the right to repossess the Property wherever the same may be found with free right of entry, and to recondition and sell the same at public or private sale. Upon request, Buyer shall deliver the Property to Seller at a place designated by Seller. Seller shall have the right to retain all payments made prior to repossession and Buyer shall remain liable for any deficiency to the extent permitted by law. Any personalty in or attached to the Property when repossessed may be sold by Seller without liability and Buyer shall be deemed to have waived any claim thereto unless written demand by certified mail is made upon Seller within 24 hours after repossession. Buyer agrees to pay reasonable attorneys' fees (15% if permitted by law) and other expenses incurred by Seller in effecting collection, repossession or resale hereunder. Seller's remedies hereunder are in addition to any given by law and may be enforced successively or concurrently. Waiver by Seller of any default shall not be deemed a waiver of any other default.

20. GENERAL
No transfer, renewal, extension or assignment of this contract or any interest hereunder, and no loss, damage or destruction of or to the Property, shall release Buyer from his obligations hereunder. This contract constitutes the entire agreement between the parties and no modification hereof shall be valid in any event, and Buyer expressly waives the right to rely thereon, unless made in writing signed by Seller. Any provision of this contract prohibited by applicable law shall be ineffective to the extent of such prohibition without invalidating any other provision of this contract. This contract shall be governed by the laws of the state in which the original Seller is located as shown on the face of this contract.

GUARANTY

For Value Received, each of the undersigned guarantors, jointly and severally, guaranties the prompt and unconditional payment, performance and discharge of all Buyer's obligations under the within contract and covenants that in the event of default in any of said obligations thereunder, to pay upon demand the full amount remaining unpaid thereunder together with a reasonable attorney's fee (15% of the amount then due, or if prohibited, the amount permitted by law) if placed with an attorney for collection. The liability of undersigned shall not be affected by any extension, renewal or other change in the time of payment of the said contract, or any change in the manner, place or terms of payment thereof, or the release, settlement or compromise of or with any party liable for the payment thereof, or the release or non-perfection of any security thereunder. The holder of the within contract shall not be bound to exhaust its recourse against Buyer or any other person or any security the holder may at any time have before being entitled to payment from the undersigned hereunder. Each of the undersigned guarantors hereby waives notice of the acceptance of this guaranty, and of presentment, demand and protest and notices of non-payment and dishonor, and any other demands and notices required by law, and waives all setoffs and counterclaims.

Guarantor ___ Address ___

Guarantor ___ Address ___

ASSIGNMENT

The Seller named on the face of this contract sells, assigns, and transfers to Ford Motor Credit Company (hereinafter called "Ford Credit") his, its or their entire right, title and interest in and to the within contract and the Property described therein and authorizes Ford Credit to do every act and thing necessary to collect and discharge obligations arising out of or incident to said contract and assignment. In order to induce Ford Credit to accept assignment of the contract, the Seller warrants that: the contract, and guaranty if any, are genuine, legally valid and enforceable and arose from the sale of said Property; said Property is as represented to the Buyer named therein who was quoted both a deferred payment price and a lesser cash price; the within contract was complete in all respects and Seller made all disclosures required by law prior to the execution thereof by Buyer; the Buyer is not a minor, has capacity to contract and paid the down payment stated in the contract with his own funds, all statements made by or on behalf of the Buyer and furnished to Ford Credit by the Seller are true to the best of the Seller's knowledge and belief, and the Seller has no knowledge of any fact that would impair the validity or value of the contract; title to said Property is vested in the Seller free of all liens and encumbrances and the Seller has the right to assign said title; and a certificate of title to said Property showing a lien or encumbrance for the benefit of Ford Credit or the Seller has been or will be applied for forthwith if permitted by law. If there is any breach of any of the foregoing warranties, without regard to the Seller's knowledge or lack of knowledge with respect thereto or Ford Credit's reliance thereon, the Seller hereby agrees unconditionally to purchase said contract from Ford Credit, upon demand, for the full amount then unpaid whether said contract shall then be, or not be, in default. Seller further agrees that in event Buyer or any other person makes a claim against Ford Credit alleging facts which, if true, would constitute a breach of any of the foregoing warranties, Seller shall assume the defense of such claim and shall indemnify and save Ford Credit harmless from all loss, cost and expenses arising therefrom. In addition, this assignment includes the provisions of the paragraph initialed by the Seller below, provided, that if none of the paragraphs below has been initialed by Seller, this assignment shall include the provisions of the paragraph below and entitled "Repurchase." The liability of the Seller shall not be affected by any extension, renewal or other change in the time of payment of the said contract, or any change in the manner, place or terms of payment thereof or the release, settlement or compromise of or with any party liable for payment thereof or the release or non-perfection of any security thereunder. Ford Credit shall not be bound to exhaust its recourse against the Buyer or any other person or any security Ford Credit may at any time have before being entitled to payment from the Seller hereunder. The Seller waives notice of the acceptance of this assignment and notices of non-payment and non-performance of the contract and any other notices required by law and waives all setoffs and counterclaims. This assignment shall become effective upon delivery of the within contract to Ford Credit or upon Ford Credit's payment of the purchase price therefor whichever first occurs.

Initial ___ "WITHOUT RECOURSE" The assignment of said contract and shall be without recourse to the Seller, except as otherwise provided by the terms of the Ford Motor Credit Company Retail Plan in effect at the time this assignment is accepted.

Initial ___ "REPURCHASE" The Seller guarantees payment at the full amount remaining unpaid under said contract, and covenants, if default be made in payment of any instalment thereunder to pay the full amount then unpaid to Ford Credit upon demand except as otherwise provided by the terms of the Ford Motor Credit Company Retail Plan in effect at the time this assignment is accepted.

Initial ___ "LIMITED REPURCHASE" The Seller guarantees payment of the full amount remaining unpaid under said contract, and covenants, if default be made in payment of any instalment thereunder to pay the full amount then unpaid to Ford Credit upon demand except as otherwise provided by the terms of the Ford Motor Credit Company Retail Plan in effect at the time this assignment is accepted provided, that if the Buyer satisfactorily pays each of the first ___ instalments coming due under the within contract this assignment shall thereafter be without recourse against the Seller, except as otherwise provided by the terms of the Ford Motor Credit Company Retail Plan in effect at the time this assignment is accepted.

Initial ___ "PARTIAL GUARANTY" Notwithstanding the terms of the Ford Motor Credit Company Retail Plan, the Seller unconditionally guaranties payment of the full amount remaining unpaid under said contract, and agrees to purchase said contract from Ford Credit upon demand for the full amount then unpaid whether said contract shall then be, or not be, in default, provided, however, at the time of any such demand by Ford Credit, Seller may, at his election, pay to Ford Credit the sum of $ ___ in consideration of being released from such guaranty obligation, and in such event, the assignment of said contract is without recourse against the Seller, except as otherwise provided by the terms of the Ford Motor Credit Company Retail Plan in effect at the time this Assignment is accepted.

Initial ___ "FULL GUARANTY" Notwithstanding the terms of the Ford Motor Credit Company Retail Plan, the Seller unconditionally guaranties payment of the full amount remaining unpaid under said contract, and agrees to purchase said contract from Ford Credit, upon demand, for the full amount then unpaid whether said contract shall then be, or not be, in default.

ANSWER OF FORD MOTOR CREDIT CO.

(Filed June 13, 1975)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
(Title Omitted in Printing)

COUNT I

1. Admits that this action purports to be for money damages and purports to be filed under the Truth in Lending Act, 15 USCA, Section 1601 et seq., purportedly to recover statutory damages, reasonable attorney's fees and costs by reason of alleged violations of the Act and Federal Reserve Regulation Z, 12 CFR Section 226; and admits the jurisdiction of the court purports to be invoked pursuant to Section 130(e) of the Act, 15 USCA, Section 1640(e), and 28 USCA, Section 1337.

2. Admits paragraph 2.

3. Admits that defendant Ford Motor Credit Co. is a foreign corporation and that it maintains an office at 4309 N. E. Tillamook, P. O. Box 13070, Portland, Oregon; and denies the remainder of paragraph 3.

4. Admits that defendant Dee Thomason Ford is an Oregon corporation engaged in the business of selling automobiles at 309 S. State Street, Lake Oswego, Oregon; and denies the remainder of paragraph 4.

5. Admits that on or about July 12, 1974 plaintiff Dennis Millhollin purchased from defendant Dee Thomason Ford a 1973 Ford Pinto Wagon with cash price of $3,098, a finance charge of $711.84, a total of payments of $3,084.64 and deferred payment price of $3,984.64; and admits that the contract evidencing the purchase was assigned by defendant Ford Motor

Credit Co. in the regular course of business; and denies the remainder of paragraph 5.

6. Admits paragraph 6.

7. Denies paragraph 7.

8. Denies paragraph 8.

COUNT II

9. Except as admitted hereinabove, denies each and every allegation of paragraphs 9, 10 and 11.

FIRST DEFENSE

10. Plaintiffs' Complaint fails to state facts sufficient to constitute a claim for which relief can be granted.

/s/ Dezendorf, Spears, Lubersky & Campbell
Herbert H. Anderson
John M. Berman

DEZENDORF, SPEARS, LUBERSKY
& CAMPBELL
Herbert H. Anderson
John M. Berman
Attorneys for Defendant
Ford Motor Credit Co.

(Affidavit of Mailing Omitted in Printing)

ANSWER OF DEFENDANT DEE THOMASON FORD CO.

(Filed June 16, 1975)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

(Title Omitted in Printing)

Defendant, Dee Thomason Ford Co., for its answer alleges:

I.

Admits paragraph II and paragraph VI; and admits that the defendant, Ford Motor Credit Co., is a foreign corporation and that it maintains an office at 4309 N.E. Tillamook, Post Office Box 13070, Portland, Oregon; that defendant Dee Thomason Ford Co. is an Oregon corporation engaged in the business of selling automobiles at 390 South State Street, Lake Oswego, Oregon, and that on or about July 12, 1974 plaintiff Dennis Milhollin and plaintiff Michelle Milhollin purchased a 1973 Pinto Wagon pursuant to a retail installment contract of the same date, a true copy of which is attached as Exhibit "A" to plaintiff's complaint.

II.

Except as expressly admitted herein, Defendant Dee Thomason Ford Co. denies each and every other allegation contained in plaintiffs' complaint and the whole thereof.

FIRST DEFENSE.

I.

Plaintiffs' complaint fails to state facts sufficient to constitute a claim for which relief can be granted.

KEANE, HAESSLER, HARPER, PEARLMAN and COPELAND

By /s/ Michael J. Esler
Michael J. Esler

Of Attorneys for Defendant, Dee Thomason Ford Co.

(Certificate of Mailing Omitted in Printing)

FORD MOTOR CREDIT CO.'S ANSWERS TO INTERROGATORIES

(Filed August 8, 1975)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
(Title Omitted in Printing)

Defendant Ford Motor Credit Co. answers the interrogatories served upon it by plaintiffs as follows:

* * *

INTERROGATORY NO. 4: Has any contract signed by either plaintiff been assigned to you?

a. Please state the date of assignment of each contract.

b. Please state the name and address of each assignor and each assignee on each contract.

c. Please state the consideration for each assignment on each contract.

d. Please state the name and address of the present custodian of the assignment of each contract.

e. Please describe any agreement between you and any other person pursuant to which any contract signed by either plaintiff was assigned.

ANSWER TO INTERROGATORY NO. 4: Yes.

a. July 12, 1974 (only known account)

b. Assignor: Dee Thomason Ford
309 South State Street
Lake Oswego, Oregon

Assignee: Ford Motor Credit Company
Portland, Oregon

c. Sight draft dated July 15, 1974—$2,572.80

d. Dee Thomason Ford

e. Dee Thomason Ford assigns contracts to this defendant pursuant to the terms set forth in the booklet entitled "Automotive Finance Plans For Ford Motor Credit Dealers" and supplemental operations bulletins. Copies are available for inspection and copying at plaintiffs' convenience upon reasonable notice.

INTERROGATORY NO. 5: Please itemize all payments paid on the contracts involved in the transaction, whether paid to you or to any assignor, and state the date of each payment, the amount of each payment, the person who made the payment, and the person or firm that received the payment.

ANSWER TO INTERROGATORY NO. 5: Attached hereto as Exhibit B is a payment summary of those payments payments received by Ford Credit. Ford Credit's records do not reflect who made each contract payment. According to the contract, a $400 cash downpayment was made at the signing of the contract, and $300 was allowed for a trade-in. An additional $200 downpayment was to be made on or before August 12, 1974, and was made on August 12, 1974. Ford Credit was paid $200 by the dealer on that date.

* * *

INTERROGATORY NO. 14: Please state whether the automobile purchased by plaintiffs was repossessed. If so:

a. Please identify the name and address of the person or Company who repossessed the automobile.

b. Please identify the name and address of the person who authorized the repossession.

c. Please state the date of the repossession.

ANSWER TO INTERROGATORY NO. 14: Yes.

a. Ford Motor Credit Company, 2309 N. E. Tillamook, Portland, Oregon

b. Same as subparagraph "a" above.

c. February 21, 1975

INTERROGATORY NO. 15: If the answer to the previous Interrogatory is yes, please indicate the term of the contract authorizing the repossession.

a. Please state the reasons for the repossession.

ANSWER TO INTERROGATORY NO. 15: Section 19 of Additional Terms and Conditions of the Contract.

a. Default in payment of instalments due under the contract; failure to supply evidence of insurance; Ford Credit deemed the indebtedness and the property insecure.

* * *

INTERROGATORY NO. 20: Subsequent to the date of the repossession, did either plaintiff contact FORD MOTOR CREDIT and offer to pay the delinquency payments under the contract for return of the automobile. If so:

a. Please state the date of such contact.

b. Please identify who was contacted.

c. Please state the substance of the response of FORD MOTOR CREDIT to such offer.

ANSWER TO INTERROGATORY NO. 20. By letter dated February 21, 1975, Richard A. Slottee, on behalf of plaintiffs, stated that he spoke with Mr. Peter Deckers on February 21, 1975 and offered on their behalf to pay the delinquent amount, which he stated was

$171.36. To the best of this defendant's present knowledge, that is correct. According to Mr. Slottee's letter, Mr. Deckers advised that the balance owing had been accelerated and that plaintiffs should immediately attempt to refinance the vehicle. To the best of this defendant's present knowledge, that is correct. A similar conversation occurred between Mr. Slottee and Mr. Ted Haines at about the same time.

INTERROGATORY NO. 21: Please state the amount FORD MOTOR CREDIT required plaintiffs to pay to obtain possession of the automobile, subsequent to the date of the repossession.

a. Please itemize the components of such amount.

b. Please identify any other action required of the plaintiffs prior to obtaining possession of the automobile.

ANSWER TO INTERROGATORY NO. 21: The balance owing to pay off the contract was $2,440.42 and payment of that sum was the only condition to obtain possession of the vehicle. That sum was composed of unpaid principal balance of $2,406.19; late charges of $9.73; and repossession expense of $24.50.

* * *

STATE OF OREGON, County of Multnomah—ss.

I, L. B. PLUMMER, being first duly sworn, depose and say that I am the Branch Manager of Ford Motor Credit Co.; that I have read the foregoing Answers

to Interrogatories; and that the contents thereof are true and correct as I verily believe.

/s/ L. B. Plummer
L. B. Plummer
(Jurat Omitted in Printing)

/s/ Dezendorf, Spears, Lubersky & Campbell,
Herbert H. Anderson
John M. Berman

DEZENDORF, SPEARS, LUBERSKY & CAMPBELL
Herbert H. Anderson
John M. Berman
Attorneys for Defendant
Ford Motor Credit Company

(Exhibit A to Ford Motor Credit Co.'s Answers to Interrogatories Omitted in Printing)

Exhibit B to Ford Motor Credit Co.'s Answers to Interrogatories

DATE PAYMENT RECEIVED	AMOUNT
8/12/74	$200.00
8/26/74	85.68
11/19/74	85.68
12/ 2/74	85.68
12/16/74	85.68

(Certificate of Mailing Omitted in Printing)

AFFIDAVIT

(Filed October 20, 1975)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

(Title Omitted in Printing)

STATE OF OREGON, County of Multnomah—ss.

DENNIS MILLHOLLIN and MICHELLE MILLHOLLIN, each being first duly sworn, depose and say:

That DENNIS MILLHOLLIN and MICHELLE MILLHOLLIN are presently husband and wife, and were husband and wife at the time the purchase of the automobile was made as alleged in the complaint on file herein.

That on July 12, 1974 we purchased a 1973 Ford Pinto automobile from DEE THOMASON FORD. That pursuant to this purchase, we signed a retail installment contract, a true copy of which was attached to the complaint filed herein. We were both present at the time of the purchase and at the time of signing the contract.

That the automobile purchased from DEE THOMASON FORD was purchased for our personal use and for non-business purposes.

That we made payments on said contract of $200.00 on August 12, 1974, $85.68 on August 26, 1974, $85.68 on November 19, 1974, $85.68 on December 2, 1974, and $85.68 on December 16, 1974. That we did not purchase physical damage insurance for the automobile, nor were we notified that such insurance must be purchased.

That on February 21, 1975 the automobile which we purchased from DEE THOMASON FORD was repossessed. That on February 21, 1975 we contacted defendant FORD MOTOR CREDIT CO. and offered to pay the delinquent amount of $171.36. That we were informed that the balance owing on the contract had been accelerated and that the automobile would be released only upon payment of the sum of $2,440.42.

/s/ Dennis Millhollin
Dennis Millhollin

/s/ Michelle Millhollin
Michelle Millhollin

(Jurat Omitted in Printing)

(Certificate of Mailing Omitted in Printing)

AFFIDAVIT

(Filed November 21, 1975)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

(Title Omitted in Printing)

STATE OF OREGON, County of .....—ss.

I, L. B. Plummer, being duly sworn depose and say:

1. I am the Branch Manager of the Portland branch of defendant Ford Motor Credit Company.

2. In the event Ford Motor Credit Company decides to accelerate the balance owed as a result of the default of a contract purchaser, it always computes the interest rebate the same as it would compute it if the contract purchaser voluntarily prepaid the contract, as set forth in paragraph 14 on the face of the contract.

/s/ L. B. Plummer
L. B. Plummer

(Jurat Omitted in Printing)

(Affidavit of Mailing Omitted in Printing)

AFFIDAVIT

(Filed December 19, 1975)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

(Title Omitted in Printing)

STATE OF OREGON, County of Multnomah—ss.

I, Peter J. Deckers, being duly sworn depose and say:

1. I am an employee of Ford Motor Credit Co. and was responsible for the account of Dennis and Michelle Milhollin.

2. Prior to the execution of the Retail Installment Contract, Michelle Milhollin completed a Customer Statement to Ford Motor Credit Co. The purpose of that statement was to cause Ford Credit to purchase the Retail Installment Contract from Dee Thomason Ford. Attached hereto as Exhibit A is a true and correct copy of that Customer Statement.

3. As noted on the Customer Statement and on the Retail Installment Contract, the Milhollins elected to obtain their own insurance.

4. By letter dated 7-15-74, Ford Credit asked plaintiffs to supply certain information concerning their physical damage insurance. Attached hereto as Exhibit B is a true and correct copy of that letter.

5. On or about 7-17-74, Ford Credit attempted to verify that the Milhollins had obtained insurance through Elite Insurance. It was advised that Elite Insurance only insured motorcycles. Ford Credit was then advised that insurance would be obtained through Farmers Insurance Group. Attached hereto as Exhibit

C is a true and correct copy of the record of Ford Credit so indicating.

6. Thereafter a follow-up letter was sent requesting information concerning said insurance. Attached hereto as Exhibit D is a true and correct copy of that letter.

7. On or about 9-25-74, Ford Credit again attempted to confirm that plaintiffs had obtained insurance. Attached hereto as Exhibit E is a true and correct copy of the Company's records indicating that such verification could not be obtained.

8. On or about 10-4-74 Ford Credit obtained single interest insurance to protect its own interest. By letter dated 10-4-74 it so notified plaintiffs. Attached hereto as Exhibit F is a true and correct copy of that letter.

9. From the date the second payment was due, 9-29-74, plaintiffs were in default on their payments. The last payment received was received on 12-16-74.

10. On 10-23-74 Ford Credit was advised that plaintiffs had separated and Mrs. Milhollin was in Wisconsin with the vehicle. Upon further investigation, Ford Credit was advised that plaintiffs were not separating and that Mrs. Milhollin would return to Portland.

11. On at least 10 separate dates, employees of Ford Credit attempted by telephone to contact plaintiffs both in Portland and in Milwaukee, Wisconsin, in order to obtain payment to bring the contract current and to determine whether or not insurance had been obtained. So far as I recall, the Milhollins did not initiate any contacts with Ford Credit to explain their default or to advise how they intended to cure same.

12. On 2-20-75, Ford Credit again attempted to verify the insurance coverage claimed to have been obtained by plaintiffs. Ford Credit was advised that there was no insurance coverage because the premiums had never been paid. Attached hereto as Exhibit G is a true and correct copy of Ford Credit's records so indicating.

13. The decision to accelerate the balance owing and not to reinstate the contract was based on the history of extensive collection efforts involved, and the fact that plaintiffs appeared to be unable or unwilling to make the contract payments or to purchase insurance to protect the public, themselves or Ford Credit.

14. To the best of my knowledge, at no time did plaintiffs ever express any surprise that Ford Credit had purchased their contract, or that they were no longer dealing with Dee Thomason Ford. Plaintiffs made the monthly payments which they actually made, directly to Ford Credit.

/s/ Peter J. Deckers
Peter J. Deckers

(Jurat Omitted in Printing)

(All Exhibits to Affidavit Omitted in Printing)

(Affidavit of Mailing Omitted in Printing)

RECOMMENDATION AND ORDER

(Filed April 7, 1976)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

DENNIS MILHOLLIN and
MICHELLE MILHOLLIN,

Plaintiffs,

vs.

FORD MOTOR CREDIT CO., a
corporation, and DEE THOMASON
FORD, a corporation,

Defendants.

Civil No. 75-334

This is an action for money damages brought under the Truth in Lending section of the Consumer Credit Protection Act, 15 U.S.C. § 1601, *et seq.*, for alleged violations of the Truth in Lending Act ("Act"), and Federal Reserve Board Regulation Z ("Reg. Z"), 12 C.F.R. § 226, *et seq.* Jurisdiction is conferred by 15 U.S.C. § 1640(e).

In July of 1974, plaintiffs, Dennis and Michelle Milhollin, purchased a 1973 Ford Pinto automobile from defendant Dee Thomason Ford on a deferred payment plan. The purchase price was $3,098.00 and the deferred payment price $3,983.64. Plaintiffs put down a cash payment of $400.00 and were allowed a $300.00 trade-in allowance on their old automobile. Additionally, a $200.00 balloon payment to be made August 12, 1974, further increased the down payment to a total of $900.00. The sum of $2,372.80 was financed at an annual percentage rate of 17.91%.

After the $200.00 balloon payment, plaintiffs were to pay 35 monthly installments of $85.68 each and one final installment of $85.84 commencing on August 29, 1974. Because plaintiffs did not maintain property damage insurance on the automobile, the assignee of the purchase contract, defendant Ford Motor Credit Company ("FMCC"), obtained this insurance and added the premium to the principal. This resulted in the payments due being increased to $94.61 per month beginning with the December 29, 1974, payment.

FMCC, without notification to the plaintiffs, repossessed the automobile on February 21, 1975. FMCC gives as reasons for repossession: (a) default in payment of installments due under the contract (two payments were overdue); (b) failure to supply evidence of insurance; and (c) FMCC deemed the indebtedness and property "insecure." FMCC's answer to plaintiffs' interrogatory 15.

By letter dated the same day as the repossession, February 21, 1975, plaintiffs, through their attorney, offered to pay the delinquent amount. FMCC responded that it had elected to accelerate the amount due. This acceleration had the effect of forcing plaintiffs to pay $2,440.42 rather than the overdue amount in order to redeem the automobile. Plaintiffs were not able to make the payment, and the Pinto was re-sold.

Plaintiffs allege that the contract violated the Act and Reg. Z in four particulars:

(1) Failure to disclose the acceleration clause on the face of the contract;

(2) Failure to disclose clearly and conspicuously that plaintiffs were required to obtain physical damage insurance on the automobile;

(3) Failure to clearly identify FMCC as a creditor on the face of the contract;

(4) Failure to describe or identify the type of security interest retained or acquired by FMCC. *Each* plaintiff seeks the maximum allowable damages of $1,000.00.

All parties move for summary judgment. Fed. R. Civ. P. 56. I find that there is no genuine and material issue of fact in dispute.[1] Therefore, this matter is ripe for summary judgment.

I. WAS FMCC A "CREDITOR"?

FMCC contends that it is not subject to the Act or Reg. Z for any violations contained in the contract in that, with regard to this transaction, it is not a "creditor" within the meaning of the statute and regulations. It maintains that assignees were not specifically made subject to the Act until October 28, 1974 (after the contract in issue was executed). Act of Oct. 28, 1974, Pub. L. 93-495, Title IV, § 413(a), 88 Stat. 1520, *adding* 15 U.S.C. § 1614. Therefore, FMCC's argument continues, it could not have been subject to the Act prior to the enactment of § 1614.

[1]Dee Thomason contends that its attempted good faith compliance with the Act and Reg. Z is a valid defense here, and, in any event, the factual issues of good faith and alleged oral disclosures made to the plaintiff preclude summary judgment. A recent 10th Circuit case, *Redhouse v. Quality Ford Sales, Inc.*, 511 F.2d 230 (10th Cir. 1975), is cited by Dee Thomason for the proposition that damages are improper in Truth in Lending Act cases where the debtor is supplied with full disclosure, be it on the face of the contract or oral. Insofar as *Redhouse* can be read as holding good faith, oral disclosure, or lack of damage causation to be defenses to violations of the Act or Reg. Z, I respectfully must disagree. I find nothing in the statute or its legislative history which suggests that any standard other than strict liability should be applied.

Plaintiffs counter with the assertion that FMCC was the true creditor in this transaction, and Dee Thomason was merely a "conduit." Thus, FMCC would have been subject to the Act as a "creditor" even before the enactment of § 1614.

I agree with the plaintiffs. The conduit approach has been applied in many analogous situations before the enactment of § 1614.[2] Here, at the same time as the sale of the automobile, and in the same transaction, Dee Thomason arranged for the extension of credit by FMCC, and assigned the purchase contract to FMCC. The transaction involving Dee Thomason and FMCC was undertaken pursuant to the usual business practices of defendants in regularly arranging for the extension of credit to consumers. That this was the usual business practice of Dee Thomason and FMCC is evidenced by the following facts: (a) The contract was printed by defendant FMCC, naming FMCC as the assignee; (b) In 1974, Dee Thomason assigned 345 such contracts to FMCC; (c) FMCC financed substantially all of the retail installment contracts signed with Dee Thomason; and (d) The assignments were made pursuant to instructions contained in a booklet issued by FMCC. FMCC's answers to plaintiffs' interrogatories 4, 26 and 27.

Additionally, it should be noted that the terms of the Act itself would seem to apply to FMCC here,

[2]See, e.g., *Johnson v. Johnson*, IV CCH Consumer Credit Guide ¶ 98,556, II Poverty Law ¶ 21,220 (M.D. Ga. 1975); *Meyers v. Clearview Dodge Sales, Inc.*, 384 F. Supp. 722 (E.D. La. 1974); *Philbeck v. Timmers Chevrolet, Inc.*, 361 F. Supp. 1255 (N.D. Ga. 1973), *rev'd on other grounds*, 499 F.2d 971 (5th Cir. 1974); *Garza v. Chicago Health Clubs, Inc.*, 347 F. Supp. 955 (N.D. Ill. 1972); *Joseph v. Norman's Health Club, Inc.*, 336 F. Supp. 307 (E.D. Mo. 1971).

even without the judicially engrafted "conduit theory." Section 103(f) of the Act, 15 U.S.C. § 1601(f) defines a creditor as one who:

> [R]egularly extend[s], or arrange[s] for the extension of, credit for which the payment of a finance charge is required, whether in connection with loans, sales of property or services, or otherwise. The provisions of this subchapter apply to any such creditor, irrespective of his or its status as a natural person or any type of organization.

I conclude, therefore, that, with respect to the transaction at issue here, FMCC is a creditor within the meaning of the Act.[3]

II. DISCLOSURE OF THE ACCELERATION CLAUSE

The Act requires that the creditor must disclose "the default, delinquency, or similar charges payable in the event of late payments." 15 U.S.C. § 1639(a)(7). Plaintiffs contend that the right of acceleration constitutes a "charge" within the meaning of section 1639(a)(7), and must be disclosed on the face of the contract.

Plaintiffs and FMCC have both provided excellent briefs to the court on this issue. Ample authority supports the position that an acceleration clause is a "charge." Ample authority also supports the position that where, as here, only accrued interest becomes due in case of acceleration, the acceleration clause is not a "charge." I feel compelled both by *stare decisis* and logic to follow Judge Skopil's ruling in *Woods v. Beneficial Finance Co. of Eugene,* 395 F. Supp. 9 (D.Or.

[3]This holding is, of course, limited to the facts of this case.

1975). The duty to disclose and fully explain any right of acceleration was made clear in *Woods.* That duty, however, is prospective in this District from the date of the *Woods* decision, February 14, 1975. 395 F. Supp. at 16. Since the transaction in issue took place before *Woods,* there was no duty at that time upon either Dee Thomason or FMCC to disclose the acceleration clause.[4]

III. DISCLOSURE OF THE INSURANCE REQUIREMENT

Plaintiffs maintain that since failure to obtain property damage insurance on the automobile can result in default and acceleration, it also constitutes a "charge" under section 1639(a)(7), and must be disclosed.

Although plaintiffs' argument is somewhat plausible, it is rejected for two reasons:

(1) 12 C.F.R. § 226.4(a)(6), which sets forth the physical damage insurance disclosure requirements (these being in conjunction with disclosures for the determination of the finance charge), has been complied with. Just above the buyer's signature by which Mr. Milhollin acknowledged his desire to obtain life and disability insurance in connection with the contract appears the notice:

> (2) You have the right to choose the person through whom the Physical Damage Insurance *required* under this contract is to be obtained. (Emphasis added).

(2) No authority is cited in support of the proposition that FMCC's decision to take out insurance on

[4]Plaintiffs' suggestion that the defendants' duty after the *Woods* decision was to change those contracts previously entered into is, to say the least, unrealistic.

the automobile because of plaintiffs' failure to do so constitutes a "charge" within the meaning of 15 U.S.C. § 1639(a)(7).

IV. CLEAR IDENTIFICATION OF FMCC

Section 226.6(b) of Reg. Z provides:

> If there is more than one creditor in a transaction, *each creditor* shall be clearly identified and shall be responsible for making only those disclosures required by this part which are within his knowledge and purview of his relationship with the customer. (Emphasis added).

Section 226.8(a) provides:

> All of the disclosures shall be made together on either
>
> (1) the note or other instrument evidencing the obligation on the same side of the page and above or adjacent to the place for the customer's signature; or
>
> (2) one side of a separate statement which identifies the transaction.

The only reference to FMCC on the face of the contract is one sentence in quite small type just above the place for the *seller's* signature. This sentence states: "The foregoing contract hereby is accepted by the Seller and assigned to Ford Motor Credit Company in accordance with the terms of the Assignment set forth on the reverse side hereof." Dee Thomason Ford, on the other hand, is identified at the top of the face of the contract in rather large writing.

FMCC has not been identified clearly within the meaning of Reg. Z. In a situation such as this where the true creditor is a credit company, that entity should be clearly identified so that the debtor knows whom

or what he is doing business with. I must assume that the only reason for placing FMCC's name in small type on the face of the contract in an obscure place is that, hopefully at least, the debtor will fail to read this provision. It is not too much to ask that the true creditor be identified in the same manner the seller is.

V. DESCRIPTION OF SECURITY INTEREST

By virtue of the terms of the purchase contract, FMCC took a security interest in the Pinto automobile when the contract was executed. This security interest was perfected the same date as the sale by notation on the certificate of title. ORS 79.3020(1)(d). The disclosure with regard to this security interest states the following:

> (13) Security Interest: Seller shall have a security interest under the Uniform Commercial Code in the Property (described above) and in the proceeds thereof to secure the payment in cash of the Total of Payments and all other amounts due or to become due hereunder.

Section 226.8(b)(5) provides that the required disclosures must include:

> A description or identification of the type of any security interest held or to be retained or acquired by the creditor in connection with the extension of credit, and a clear identification of the property to which the security interest relates or, if such property is not identifiable, an explanation of the manner in which the creditor retains or may acquire a security interest in such property which the creditor is unable to identify. . . . If after-acquired property will be subject to the security

> interest, or if other or future indebtedness is or may be secured by any such property, this fact shall be clearly set forth in conjunction with the description or identification of the type of security interest held, retained or acquired.

The defendants' disclosure of their security interests fail to comply with Reg. Z. First, there is no indication that any security interest is held by FMCC.

Secondly, the "description" of the type of security interest held by FMCC and Dee Thomason amounts to little more than a statement that "a security interest under Oregon law" is retained by the seller. (The Uniform Commercial Code is codified at ORS 71.1020, *et seq.*). It should be noted that *Woods* held that the *incorrect* disclosure that the security interest involved covered after-acquired consumer goods was a violation of Reg. Z. At the least, defendants should have disclosed the *type* of security interest retained under the UCC.[5] Otherwise, a consumer might easily be misled as to his rights in the collateral.

Thirdly, the language "and all other amounts due or to become due hereunder" is, as was the language in *Woods,* surplusage which could be confusing not only to a consumer, but to an attorney as well. Is this meant to be cross-collateral clause,[6] or merely

[5]This is not to require, as FMCC suggests, that an index of the types and qualities of different security interests possible under the UCC must be disclosed. Something more than the brief statement that "a security interest under the Uniform Commercial Code" is required, however.

[6]For an example of this type of financing arrangement, see *Williams v. Walker-Thomas Furniture Co.,* 350 F.2d 445 (D.C. Cir. 1965).

It is doubtful that a cross-collateral clause was intended in this transaction where only a single automobile was purchased. The language which describes the security interest does not, however, alleviate the confusion.

a statement that add-ons (such as the insurance premiums in this case) also shall become secured? The generality of the language produces uncertainty.

FMCC would be wise to heed the recent statement of Judge Solomon with regard to language used by insurance companies in their policies:

> Insurance companies could prepare policies in clear, simple and precise language which would inform insureds of the limits of their coverage. Insurance companies could avoid the risk of ambiguity if they use short and precise words and short and simple sentences to express their intent clearly. In spite of continued admonitions of the courts to get rid of such language, insurance companies continue to issue such policies using insurance jargon and verbose and meaningless generalities, all of which result in ambiguities.

Champion International Corp. v. Continental Casualty Co., 400 F. Supp. 978, 981 (S.D.N.Y. 1975).

Again, I must assume that the generality and obscure nature of the language are intended to either confuse the consumer or hide something from him.

VI. DAMAGES

Section 130 of the Act, 15 U.S.C. § 1640(a)(1), sets the damages recoverable as twice the finance charge "in connection with the transaction, except that the liability under this paragraph shall not be less than $100 nor greater than $1,000." 15 U.S.C. § 1640(a)(2) also provides for the recovery of attorney's fees and costs for the successful plaintiff.

Plaintiffs contend that under the Act, joint borrowers are entitled to recover twice the amount of the damages

specified thereunder. This argument is based on the proposition that both debtors are required to receive the disclosures required by the Act and that each is therefore entitled to damages. This contention fails for two reasons.

First, the language of section 1640 itself is directed at the "transaction" involved, not the parties involved.

Secondly, the congressional intent to limit the recovery in a single credit transaction to $1,000.00 despite the number of borrowers is quite clear. The House Banking and Currency Committee Report, 1968 U.S. Code Cong. & Admin. News at 1976, states the purpose of the civil liability section as follows:

> While the primary enforcement of the bill would be accomplished under the administrative enforcement section . . . further provision is made for the institution of any civil action by an aggrieved debtor. Any creditor failing to disclose required information would be subject to civil suit with a penalty equal to twice the finance charge, with a minimum penalty of $100 and a maximum penalty of $1,000 *on any individual credit transaction*. . . . (Emphasis added).

The plaintiffs, therefore, are entitled to $1,000.00, costs and attorney's fees.

Dated this 6th day of April, 1976.

/s/ George E. Juba
United States Magistrate

After review of the file and record in this case, I approve the foregoing recommendation.

IT IS ORDERED that defendants' motions for summary judgment are denied.

IT IS FURTHER ORDERED that plaintiffs' motion for summary judgment is granted. Plaintiffs shall recover from the defendants the sum of $1,000.00. At a subsequent hearing attorney's fees shall be determined.

Dated this 6th day of April, 1976.

/s/ Robert C. Belloni
United States District Judge

ORDER

(Filed and Entered June 25, 1976)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

DENNIS MILHOLLIN and MICHELLE MILHOLLIN,

Plaintiffs,

v.

FORD MOTOR CREDIT CO., a corporation, and DEE THOMASON FORD, a corporation,

Defendants.

CIVIL NO. 75-334

This is an action for money damages brought under the Truth in Lending section of the Consumer Credit Protection Act, 15 U.S.C. §1601, *et seq.*, for alleged violations of the Truth in Lending Act, and Federal Reserve Board Regulation Z (Reg. Z), 12 C.F.R. §226, *et seq.* Jurisdiction is conferred by 15 U.S.C. §1640(e).

The undisputed facts of this case are set out in the attached Recommendation and Order dated April 6, 1976. On that date, I reviewed the record, approved Magistrate Juba's recommendation, denied defendants' Motions for Summary Judgment, granted plaintiffs' Motion for Summary Judgment and ordered that plaintiffs recover judgment against the defendants in the sum of $1,000.

The defendants asked for and received a rehearing. I have studied their additional memoranda and have heard oral argument on the rehearing. Nothing contained in either, however, convinces me that any change in the original opinion should be made.

A recent case out of the Western District of Pennsylvania deserves some comment, however. *Virginia Jones Main v. Faller Ford, Inc. et al.*, Civil No. 74-337 (W.D.Penn. 1976). In that case, the judge believed that the contract adequately identified FMCC as a creditor. I have not seen the contract in the *Main* case. Its wording seems to be identical to the one in the case at hand. The contract in question has, as its only reference on the face of the contract to FMCC as a creditor, one sentence in small type above the place for the *seller's* signature. Dee Thomason Ford, on the other hand, is identified at the top of the face of the contract in rather large writing. FMCC has not been identified clearly within the meaning of Reg. Z.

Defendants ask this court to make this opinion effective only prospectively from the date of this opinion. They have presented no authority, however, which would give this court the power to reach such a result. That request is denied.

IT IS ORDERED that the defendants' motions to modify and/or vacate are denied.

Dated this 25 day of June, 1976.

/s/ Robert C. Belloni
United States District Court

ORDER

(Filed and Entered June 25, 1976)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

DENNIS MILHOLLIN and MICHELLE MILHOLLIN,

Plaintiffs,

vs.

FORD MOTOR CREDIT CO., a corporation, and DEE THOMASON FORD, a corporation,

Defendants.

CIVIL NO. 75-334

Plaintiffs' attorneys fees are set at $750.00.

Dated this 25 day of June, 1976.

/s/ Robert C. Belloni
United States District Judge

SUMMARY JUDGMENT

(Filed and Entered June 25, 1976)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

DENNIS MILHOLLIN and MICHELLE MILHOLLIN,

Plaintiffs,

v.

FORD MOTOR CREDIT CO., and DEE THOMASON FORD,

Defendants.

Civil No. 75-334

Based on the record,

IT IS ORDERED AND ADJUDGED that plaintiffs recover from the defendants the sum of $1,000.00 general damages and the sum of $750.00 attorneys fees.

Dated: June 25, 1976.

/s/ Robert M. Christ
Clerk of Court

OPINION

United States Court of Appeals,
Ninth Circuit
(Decided December 28, 1978; Reported
at 588 F.2d 753)

Dennis MILHOLLIN and Michelle Milhollin,
Plaintiffs-Appellees,

v.

FORD MOTOR CREDIT CO., a corporation, and Dee Thomason Ford, a corporation,
Defendants-Appellants.

Dennis MILHOLLIN and Michelle Milhollin,
Plaintiffs-Cross Appellants,

v.

FORD MOTOR CREDIT CO., a corporation, and Dee Thomason Ford, a corporation,
Defendants-Cross Appellees.

Donna M. EATON,
Plaintiff-Appellee,

v.

FORD MOTOR CREDIT CO., a corporation,
Defendant-Appellant,

Bud Meadows Mazda, Inc.,
Defendant.

Darrell MESSINGER,
Plaintiff-Appellee,

v.

FORD MOTOR CREDIT CO., a corporation, and Marv Tonkin Ford Sales, Inc., a corporation,
Defendants-Appellants.

David P. ANDRESEN,
Plaintiff-Appellee,

v.

FORD MOTOR CREDIT CO., a corporation, and Webster-Wolfard Ford, Inc., a corporation,
Defendants-Appellants,

and

The California Loan and Finance Association, Amicus Curiae.

Nos. 76-2914, 76-3217, 77-3084, 77-3584 and 77-3569.

Herbert H. Anderson, Richard A. Slotte, Portland, Ore., for plaintiffs-appellees and defendants-appellants.

Appeal from the United States District Court for the District of Oregon.

Before WRIGHT and GOODWIN, Circuit Judges, and JAMESON,* District Judge.

EUGENE A. WRIGHT, Circuit Judge:

In these consolidated cases, Ford Motor Credit Corporation (Ford Credit) and several Ford dealers appeal from adverse judgments finding that they violated provisions of the Truth in Lending Act, 15 U.S.C. §§ 1601 *et seq.* (1976) (Act) and the regulations promulgated thereunder, 12 C.F.R. § 226.1 *et seq.* (1978) (Regulation Z).[1] Milhollin cross appeals from a limitation of Ford Credit's liability.

Although plaintiffs below (Consumers) allege a number of violations, we need to decide only two issues

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*Senior District Judge, District of Montana.

[1]Sections of Regulation Z cited here have remained the same in all relevant respects since these actions arose.

common to the above cases and one issue raised by the Milhollins:

(1) Whether Ford Credit was clearly identified as a creditor on the face of the contract;

(2) Whether it is necessary to disclose an acceleration clause on the face of the contract; and

(3) Whether an inadequate disclosure made to a husband and wife as joint obligors results in a multiple recovery.

I.
FACTS[2]

Ford Credit, wholly owned by the Ford Motor Company, provides financing for Ford dealers by extending operating and inventory loans and by purchasing retail installment contracts for the sale of automobiles by dealers.

A Ford Credit booklet explains its program to dealers and gives guidelines for drafting contracts it is willing to purchase. It also provides forms of credit applications, contracts and rate charts for calculating finance charges. Use of the supplied forms is not mandatory, and Ford Credit purchases contracts on other agreement forms. Many dealers disregard the suggested rate charts and develop their own finance charges.

Dealers negotiate all terms of contracts directly with customers, including the interest rate. Contracts are typically assigned shortly after sales are consummated. Although Ford Credit normally is unaware of any specific sale until the contract is proffered for assignment,

[2]These are the facts common to all above cases. Facts unique to a single case are presented later in the text, as necessary.

dealers may get prior approval for customers with marginal credit ratings.

Ford Credit is not obligated to purchase any contracts from dealers, but usually rejects only a small percentage of those offered. It pays dealers cash for the contracts less its discount.

Each delaer here has assigned the great majority of its contracts to Ford Credit.[3] Shortly after each sale Ford Credit purchased the contract, notified the buyer, and provided him a payment book. Consumers made subsequent payments to Ford Credit.

II.
DISCLOSURE OF FORD CREDIT AS A CREDITOR

In each of these cases, the district court found that Ford Credit was not clearly identified as a creditor on the face of the contract, and that this nondisclosure violated the Act and Regulation Z. To uphold the district court, we must conclude that (a) the identity of each creditor is a required disclosure under the Act or Regulation Z; (b) Ford Credit is a creditor in these transactions within the meaning of the Act; and (c) Ford Credit's status as a creditor was not adequately disclosed on the face of the contract.

Consumers maintain that Regulation Z requires the disclosure of each creditor to a transaction on the

[3]In *Messinger*, of 600 to 700 contracts assigned six months prior to and six months after the transaction with the plaintiff, the dealer assigned all but 100 to Ford Credit. The dealer in *Andresen* assigned 90% of its contracts to Ford Credit.

face of the contract.[4] A number of courts have agreed.[5] Consumers also interpret a Federal Reserve Board Official Staff Interpretation of Regulation Z to require disclosure fo each creditor.[6] Ford Credit reads the

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[4]Regulation Z provides:

> "*General rule.* Any creditor when extending credit other than open end credit shall, in accordance with § 226.6 and to the extent applicable, make the disclosures required by this section with respect to any transaction consummated on or after July 1, 1969. . . . [S]uch disclosures shall be made before the transaction is consummated. At the time disclosures are made, *the creditor shall furnish the customer with a duplicate of the instrument or a statement by which the required disclosures are made and on which the creditor is identified.*"

12 C.F.R. § 226.8(a) (1978) (emphasis added).

> "*Multiple creditors or lessors; joint disclosure.* If there is more than one creditor or lessor in a transaction, *each creditor or lessor shall be clearly identified* and shall be responsible for making only those disclosures required by this Part which are within his knowledge and the purview of his relationship with the customer or lessee. If two or more creditors or lessors make a joint disclosure, *each creditor or lessor shall be clearly identified.*"

Id. at § 226.6(d) (emphasis added).

[5]*E. g., Lauletta v. Valley Buick, Inc.*, 421 F.Supp. 1036, 1039 (W.D.Pa. 1976); *Pedro v. Pacific Plan of California*, 393 F.Supp. 315, 319-20 (N.D.Cal. 1975).

Although this court has not addressed this precise issue, it intimated that the identification of each creditor is required by invalidating a disclosure statement that did not identify one of two joint creditors in its description of that element of the finance charge going to that creditor. *Ljepava v. M. L. S. C. Properties, Inc.*, 511 F.2d 935, 942 (9th Cir. 1975) (citing 12 C.F.R. §§ 226.6(d), 226.8(d)(3) (1974)).

[6]In 1976 the Federal Reserve Board was asked whether a disclosure statement in which the finance charge, annual percentage rate, and name of the creditor were printed in the same size type satisfied the requirements of 12 C.F.R. § 226.6(a) (1978), which states that the terms "finance charge" and "annual percentage rate" "shall be printed more conspicuously than other terminology required by this part."

The Board's response, issued pursuant to the authority granted by 12 C.F.R. § 226.1(d) (1978), stated: "Although *the*

Official Interpretation narrowly to reach an opposite result.[7]

Consumers allege that Ford Credit is a creditor within the meaning of the Act[8] because it extended credit directly to them, using the dealers merely as a means to arrange for the credit. Ford Credit argues that it was a subsequent assignee of the retail installment contract, extending only commercial credit to the dealers. It cites the apparently different treatment accorded an "original creditor" and a "subsequent assignee" in various sections of the Act as evidence that Congress did not intend subsequent assignees to be subject to the same disclosure requirements as creditors.[9] Con-

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identification of a creditor is a required disclosure under § 226.8 (a), this disclosure does not constitute required 'terminology.'" Official Staff Interpretation of Regulation Z, 41 Fed.Reg. 41908 (1976) (Emphasis added).

We have held that "[g]reat deference is especially due the Federal Reserve Board's construction of its own Regulation Z because of the important interpretative and enforcement powers granted this agency by Congress under the Truth in Lending Act." *Bone v. Hibernia Bank*, 493 F.2d 135, 139 (9th Cir. 1974). *See also Anthony v. Community Loan & Investment Corp.*, 559 F.2d 1363, 1367 (5th Cir. 1977); *Johnson v. McCrackin-Sturman Ford, Inc.*, 527 F.2d 257, 267 n.23 (3d Cir. 1975).

[7]Ford Credit relies on the strained reading given 12 C.F.R. § 226.8(a) (1978) and the Official Staff Interpretation in *Grey v. European Health Spas, Inc.*, 428 F.Supp. 841, 843 (D.Conn. 1977).

[8]Regulation Z defines "creditor" as

> a person who in the ordinary course of business regularly extends or arranges for the extension of consumer credit, or offers to extend or arrange for the extension of such credit, which is payable by agreement in more than four instalments, or for which the payment of a finance charge is or may be required, whether in connection with loans, sales of property or services, or otherwise.

12 C.F.R. § 226.2(s) (1978).

[9]See, *e. g.*, 15 U.S.C. §§ 1614, 1640(d), 1641 (1976).

sumers respond by citing cases that, in certain circumstances, equate subsequent assignees with creditors for disclosure purposes.[10]

For our purposes it is unnecessary to decide whether the identification of each creditor is a required disclosure or if Ford Credit is a creditor of Consumers. Assuming an affirmative answer to these questions, we conclude that the status of Ford Credit, even if it is as a creditor, was adequately disclosed.

On the face of each contract, opposite the signature of Consumers, appears the following disclosure:

> The foregoing contract hereby is accepted by the Seller and assigned to Ford Motor Credit Company in accordance with the terms of the assignment set forth on the reverse side hereof.
> Seller .....
> By ..... Title .....

Consumers argue that the terms of 12 C.F.R. § 226.6(d) (1978), which provide that "each creditor . . . shall be clearly identified," are not met by disclosing that Ford Credit would be an assignee of the contract. They apparently argue that, because the precise

[10]*Meyers v. Clearview Dodge Sales, Inc.*, 539 F.2d 511, 514-16 (5th Cir. 1976); *Mirabal v. General Motors Acceptance Corp.*, 537 F.2d 871, 874 n.1 (7th Cir. 1976); *Joseph v. Norman's Health Club, Inc.*, 532 F.2d 86, 91-92 (8th Cir. 1976); *Bird v. Goddards Discount Furniture*, 443 F.Supp. 422, 423-24 (S.D.Ill. 1978); *Poirrier v. Charlie's Chevrolet, Inc.*, 442 F.Supp. 894, 895-96 (E.D.Mo. 1978); *Cenance v. Bohn Ford, Inc.*, 430 F.Supp. 1064, 1068-69 (E.D.La. 1977); *Lauletta v. Valley Buick, Inc.*, 421 F.Supp. 1036, 1039 (W.D.Pa. 1976); *Starks v. Orleans Motors, Inc.*, 372 F.Supp. 928, 930 (E.D.La. 1974), *aff'd*, 500 F.2d 1182 (5th Cir. 1974); *Kriger v. European Health Spas, Inc., of Milwaukee, Wisconsin*, 363 F.Supp. 334, 336 (E.D.Wis. 1973); *Garza v. Chicago Health Clubs, Inc.*, 347 F.Supp. 955, 963-64 (N.D.Ill. 1972).

word "creditor" was not used in describing Ford Credit's prospective involvement in the transaction, the Act was violated. We disagree. Nowhere does Regulation Z require use of the word "creditor." Here, the exact role that Ford Credit ultimately played in each transaction was clearly disclosed. Requiring Ford Credit to use the word "creditor" would not have given Consumers additional information nor better served the purposes of the Act.

In *Main v. Faller Ford, Inc.*, Civil Action No. 74-337 (W.D.Pa. Apr. 22, 1976), the court held that an identical statement satisfied the creditor disclosure requirements of Regulation Z:

> Whether Ford Credit may be described as the term is used in [12 C.F.R.] § 226.6(d) need not be decided in this factual context because to require such a disclosure by Ford Credit on a separate piece of paper would not be a meaningful disclosure nor would it further the goals of the Truth-In-Lending Act. Ford Credit was accurately described in the contract as the assignee and it is undisputed that plaintiff personally understood that Ford Credit would actually extend her credit and consequently be the recipient of her monthly installment payments. . . . To require Ford Credit to also disclose to plaintiff that it was also a "creditor" within the Act would be a meaningless and needless exercise providing plaintiff with duplicative information, and such duplication cannot be justified by the Act's purpose nor by the practical considerations of these circumstances.

Accord, Sharp v. Ford Motor Credit Co., 452 F.Supp. 465 (S.D.Ill. 1978) (appeal pending); *Antonio v. Can-*

al Motors, Inc., Civil Action No. 74-3163 (E.D.La. Nov. 18, 1977) (appeal pending); *Augusta v. Marshall Motor Co.*, 453 F.Supp. 912 (N.D.Ohio 1977) (appeal pending).

We agree with the reasoning in *Main* and hold that the district court erred in finding that Ford Credit was not adequately identified as a creditor on the face of the contract.[11]

III.
DISCLOSURE OF AN ACCELERATION CLAUSE

The reverse side of each contract contained an acceleration clause that did not explain the effect of acceleration on unearned interest. Ford Credit maintains that its uniform practice, although not explicitly disclosed, is to rebate unearned interest to the customer upon acceleration in the same manner as that following a voluntary prepayment.

This court faced a similar situation in *St. Germaine v. Bank of Hawaii*, 573 F.2d 572 (9th Cir. 1977). We held there that

> [t]he creditor must disclose whether a rebate of unearned interest will be made upon acceleration and also disclose the method by which the amount of unearned interest will be computed if the debt is accelerated.

Id. at 577. Failure to make these disclosures is a violation of the Act.

In *Milhollin*, the district court concluded on different grounds than those stated in *St. Germaine* that failure

[11]Since we conclude that Ford Credit's disclosure of its status was adequate, we need not consider the sufficiency of additional disclosures attached to the contract in *Andresen*.

to disclose the acceleration clause on the face of the contract was a violation of the Act. The court held, however, that it would result in liability only after the decision in *Woods v. Beneficial Finance Co. of Eugene*, 395 F.Supp. 9 (D.Or. 1975), the first Oregon case recognizing this nondisclosure as a violation. In so holding, the district court exceeded its authority because "[t]he application of doctrines limiting the retroactivity of judicial decisions is restricted to appellate courts." *Kessler v. Associates Financial Service Co.*, 573 F.2d 577, 579 (9th Cir. 1977).

We hold on the basis of *St. Germaine* that Ford Credit is liable to the Milhollins for failure to disclose the acceleration clause and its effect on unearned interest on the face of the contract.

IV.
RECOVERY FOR INADEQUATE DISCLOSURE BY JOINT OBLIGORS

At the time of the transaction in *Milhollin*, plaintiffs were husband and wife. Both signed the retail installment contract, making them jointly and severally liable for the full debt under Oregon law. They allege that the district court erred in limiting them as joint obligors to one recovery for violations under the Act.

The Act provides:

> [A]ny creditor who fails to comply with any requirement imposed under this part . . . with respect to *any person* is liable to *such person* in an amount equal to the sum of—
>
> . . .
>
> (2)(A)(i) in the case of an individual action twice the amount of any finance charge *in connec-*

tion with the transaction . . ., except that *the liability under this subparagraph shall not be less than $100 nor greater than $1,000. . . .*

15 U.S.C. § 1640(a)(1976). The first quoted words emphasized, "any person" and "such person," suggest that each joint obligor is entitled to a separate recovery. The emphasized words in the second paragraph, however, suggest that the liability for any single transaction is limited to $1,000.

The circuits have split on this issue. The Fifth and Seventh Circuits have concluded that a husband and wife as joint obligors are entitled to separate recoveries. *Davis v. United Companies Mortgage & Inv. of Gretna, Inc.*, 551 F.2d 971 (5th Cir. 1977); *Mirabal v. General Motors Acceptance Corp.*, 537 F.2d 871, 881-83 (7th Cir. 1976); *Allen v. Beneficial Finance Co. of Gary*, 531 F.2d 797, 805-06 (7th Cir.), *cert. denied*, 429 U.S. 885, 97 S.Ct. 237, 50 L.Ed.2d 166 (1976). The Fourth Circuit reached the opposite result in *Powers v. Sims and Levin*, 542 F.2d 1216, 1219-20 (4th Cir. 1976), in which the court limited the recovery of husband and wife as joint obligors to one penalty.

We believe that the Fourth Circuit's approach more closely reflects the intent of Congress. The applicable legislative history states:

> Any creditor failing to disclose required information would be subject to a civil suit with a penalty equal to twice the finance charge, with a minimum penalty of $100 and *a maximum penalty not to exceed $1,000 on any individual credit transaction.*

H.R.Rep.No. 1040, 90th Cong., 2d Sess., [1968] U.S. Code Cong. & Admin. News, pp. 1962, 1976 (emphasis added). The Milhollins, although joint obligors, entered into one credit transaction with the dealer and Ford Credit. They are entitled to one recovery.

IV.
CONCLUSION

Because the district court in *Andresen* and *Messinger* concluded Ford Credit violated the Act only on the basis of an inadequate disclosure of its creditor status, a conclusion we reject, we remand those cases for a consideration of other alleged violations of the Act not treated by the court.

Although the district court in *Milhollin* found liability on the ground used in *Andresen* and *Messinger*, it also concluded Ford Credit violated the Act by failing to disclose an acceleration clause on the face of the contract. In light of *St. Germaine*, we disagree with the rationale used by the court, but hold on other grounds that Ford Credit violated the Act by failing to disclose an acceleration clause and its effect on unearned interest. We also disagree with the court's prospective application of *Woods*, and hold that Ford Credit is liable to the Milhollins for its nondisclosure. As joint obligors, they are entitled to only one recovery.

We affirm the holding of the district court in *Eaton*, again under a different rationale,[12] on the basis of

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[12]Noting that it would be "a waste of judicial time and effort" to set forth the reasons for its decisions in light of the thorough discussion in *Milhollin*, then on appeal to this court, the district court in *Eaton* merely adopted the rationale of *Milhollin*. We agree with the conclusion in *Milhollin* that failure to disclose an acceleration clause on the face of a contract is a violation of the Act, but do so on different grounds.

Ford Credit's failure to disclose an acceleration clause and its effect on unearned interest on the face of the contract.[18]

AFFIRMED IN PART AND REVERSED IN PART.

[18]Since multiple violations of the Act in any single credit sale transaction result in only one recovery, 15 U.S.C. § 1640(g) (1976), it is unnecessary to consider any other alleged violations in *Milhollin* and *Eaton*.

FORD MOTOR CREDIT COMPANY
v.
DONNA M. EATON

RELEVANT DOCKET ENTRIES

June 24, 1976	Complaint filed
August 18, 1976	Answer of Ford Motor Credit Company filed
September 15, 1976	Answer of Bud Meadows Ford Inc. filed
October 12, 1976	Stipulation filed permitting Plaintiff to amend complaint to substitute Bud Meadows Mazda, Inc. for Bud Meadows Ford, Inc.
October 12, 1976	Amended Complaint filed
October 12, 1976	Notice of Voluntary Dismissal as to Bud Meadows Ford, Inc. filed
October 27, 1976	Answer of Ford Motor Credit Company to Plaintiff's Amended Complaint filed
May 24, 1977	Record of court trial; Order taking case under advisement
June 16, 1977	Opinion filed
July 5, 1977	Testimony of William F. Bellisario (admitted into record on May 24, 1977) filed
August 12, 1977	Findings of Fact and Conclusions of Law filed
August 12, 1977	Judgment awarding Plaintiff $1,300.00 filed and entered
September 7, 1977	Notice of Appeal filed
March 29, 1978	Order consolidating appeals filed
December 28, 1978	Opinion filed and Judgment filed and entered
June 26, 1979	Supreme Court Order of June 18, 1979 granting certiorari filed

AMENDED COMPLAINT TO ENFORCE CIVIL LIABILITY UNDER TRUTH IN LENDING ACT

(Filed October 12, 1976)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

DONNA M. EATON,

Plaintiff,

vs

FORD MOTOR CREDIT COMPANY, a corporation,

Defendant.

CIVIL NO. 76-575

COMPLAINT
COUNT I

1. This is an action for money damages. This complaint is filed and these proceedings are instituted under the Truth In Lending Act, 15 U.S.C.A. §1601 et seq (hereinafter called "Act") to recover statutory damages, reasonable attorney's fees, and costs of suit by reason of the defendant's violation of the Act and Federal Reserve Regulation Z, 12 C.F.R. §226.1 et seq (hereinafter called Regulation Z), adopted by the Board of Governors of the Federal Reserve System pursuant thereto. The jurisdiction of this court is invoked pursuant to §130(e) of the Act, 15 U.S.C.A. §1640(e), and 28 U.S.C.A. §1337.

2. The plaintiff is a natural person residing in Portland, Oregon.

3. The defendant, Ford Motor Company, is a foreign corporation engaged in the business of financing automobile purchaes at 4309 N.E. Tillamook, PO Box 13070, Portland, Oregon. At all times relevant hereto, defendant Ford Motor Credit Company, in the ordinary course of business, regularly extended, offered to extend, arranged and offered to arrange the extension of consumer credit, for which a finance charge is or may be imposed, or which is payable in more than four installments.

4. Bud Meadows Mazda is an Oregon corporation engaged in the business of selling automobiles at 1818 S.E. 82nd Avenue, Portland, Oregon. At all times relevant hereto, Bud Meadows Mazda, Inc., in the ordinary course of its business, regularly extended, offered to extend, arranged and offered to arrange the extension of consumer credit, for which a finance charge is or may be imposed, or which is payable in more than four installments.

5. On or about June 28, 1975, plaintiff entered into a consumer credit transaction with Bud Meadows Mazda, Inc. and defendant herein, which transaction consisted of the purchase from defendant of a 1973 Chevrolet Camaro automobile, for a cash price of $3,515, a finance charge of $722.10, a total of payments of $3,731.04, and a deferred payment price of $4,448.04. This purchase was financed in the regular course of business by defendant Ford Motor Credit Company, and the contract evidencing this purchase was assigned to defendant Ford Motor Credit Company in the regular course of business.

6. A true and accurate copy of the contract evidencing this purchase is attached hereto, marked "Plaintiff's Exhibit A", and by this reference is incorporated herein.

7. In the course of this transaction, defendant violated the provisions of §121 of the Act, 15 U.S.C.A. §1631, and §226.8 and §226.6 of Regulation Z, in the following respects:

(a) By failing to clearly identify on the front of the contract Ford Motor Credit Company as

a creditor in the transaction, as required by §226.6 (d), §226.6(a), and §226.8(a) of Regulation Z.

(b) By failing to disclose on the front of the contract that the defendant had the option of declaring the entire unpaid balance of the contract immediately due and payable in the event of a default or late payment by the plaintiff, as required by §128(a)(9) of the Act, 15 U.S.C.A. §1638(a)(9), and §226.8(a), §226.6(a), and §226.8(b)(4) of Regulation Z.

(c) By failing to describe or identify the type of security interest retained or acquired by defendant Ford Motor Credit Company, as required by §128(a)(10) of the Act, 15 U.S.C.A. §1638(a)(10) and §226.8(b)(5) of Regulation Z.

(d) By failing to describe or identify the type of security interest retained or acquired by defendant Ford Motor Credit Company in the automobile purchased by plaintiff, as required by §128(a)(10) of the Act, 15 U.S.C.A. §1638(a)(10), and §226.8(b)(5) of Regulation Z.

(e) By failing to describe or identify the type of security interest retained or acquired by defendants in the amounts due or to become due under the contract, as required by §128(a)(10) of the Act, 15 U.S.C.A. §1638(a)(10), and §§ 226.8(b)(5) and 226.6(a) of Regulation Z.

(f) By failing to clearly disclose on the face of the contract that in the event of default the defendant had the right to collect attorney's fees in the amount of fifteen percent, as required by §§226.8(b)(4), and 226.8(a), and §226.6(a) of Regulation Z.

(g) By failing to disclose on the face of the contract a description of each amount included in the finance charge, as required by §226.8(c)(8)(i) of Regulation Z.

(h) By failing to clearly identify or disclose on the front of the contract Bud Meadows Mazda, Inc. as a creditor in the transaction, as required by §226.6(d), §226.6(a) and §226.8(a) of Regulation Z.

(i) By failure to furnish the plaintiff with a duplicate of the original contract, in that the contract furnished to the plaintiff does not reflect the name and address of Bud Meadows Mazda, Inc. as a creditor, as required by §226.8(a) of Regulation Z.

8. As a result of the aforesaid violations of the Act, the defendant is liable to plaintiff in the sum of $1,000, plus costs and reasonable attorney's fees, as provided by §130(a) of the Act, 15 U.S.C.A. §1640(a).

WHEREFORE, plaintiff prays as follows:

1. Pursuant to §130(a) of the Truth In Lending Act, judgment be entered in plaintiff's favor and against the defendant in the sum of $1,000;

2. For reasonable attorney's fees as provided for in §130(a) of the Truth In Lending Act;

3. For costs;

4. For such other relief as may be just and proper.

/s/ Richard A. Slottee
RICHARD A. SLOTTEE
Of Attorneys for Plaintiff

("Plaintiff's Exhibit A" Not Attached to Amended Complaint Contained in Record)

(Certificate of Mailing Omitted in Printing)

NOTICE OF VOLUNTARY DISMISSAL

(Filed October 12, 1976)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

(Title Omitted in Printing)

Plaintiff herein voluntarily dismisses the within action as to defendant Bud Meadows Ford, Inc., only.

IT IS SO STIPULATED:

/s/ Richard A. Slottee
RICHARD A. SLOTTEE
Of Attorneys for Plaintiff

Date: 10/6/76

/s/ John Berman
JOHN BERMAN
Attorney for Defendant
Ford Motor Credit Company

Date: 10/6/76

/s/ Stephen S. Smith
STEPHEN S. SMITH
Attorney for Defendant
Bud Meadows Ford, Inc.

Date: 10/6/76

TRUTH-IN-LENDING

ANSWER OF FORD MOTOR CREDIT COMPANY TO PLAINTIFF'S AMENDED COMPLAINT

(Filed October 27, 1976)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

(Title Omitted in Printing)

For answer to plaintiff's Amended Complaint, defendant Ford Motor Credit Company admits and denies as follows:

1. Admits that plaintiff's Amended Complaint purports to be an action for money damages filed and instituted under the Truth-in-Lending Act, 15 USC § 1601 et seq. to recover statutory damages, reasonable attorney's fees, and costs of suit by reason of purported violations of said Act and Federal Reserve Regulation Z, 12 CFR § 226.1 et seq. adopted by the Board of Governors of the Federal Reserve Board pursuant thereto; that the jurisdiction of the Court purports to be invoked pursuant to § 130(e) of the Act, 15 USC § 1340(e) and 28 USC § 1337, and except as so admitted, denies plaintiff's paragraph 1.

2. Admits paragraph 2.

3. Admits that defendant Ford Motor Credit Company is a foreign corporation engaged in business at 4309 N. E. Tillamook, P. O. Box 13070, Portland, Oregon, and except as so admitted, denies the remainder of paragraph 3.

4. Admits that defendant Bud Meadows Mazda is an Oregon corporation engaged in the business of selling automobiles at 1818 S. E. 82nd Avenue, Port-

land, Oregon, and except as so admitted, denies the remainder of paragraph 4.

5. Admits that the contract evidencing plaintiff's purchase of a 1973 Chevrolet Camaro automobile for a cash price of $3,515.00, finance charge of $722.10, a total payment of $3,731.04 and a deferred payment price of $4,448.04 was assigned to defendant Ford Motor Credit Company at sometime after the sale of said vehicle by Bud Meadows Mazda to plaintiff, and except as so admitted, denies the remainder of paragraph 5.

6. Admits that Exhibit A, attached to plaintiff's Complaint, is a substantial copy of plaintiff's copy of her contract with Bud Meadows Mazda evidencing her purchase, and except as so admitted, denies the remainder of paragraph 6.

7. Denies paragraph 7.

8. Denies paragraph 8.

FIRST DEFENSE

9. Plaintiff's Amended Complaint fails to state facts sufficient to constitute a claim upon which relief can be granted.

SECOND DEFENSE

10. The original contract delivered and assigned to Ford Credit contained the name and address of the seller and buyer when so delivered and assigned. A true and correct copy is attached hereto as Exhibit A. Plaintiff acknowledged in writing on said contract that she had received a true and completely filled in copy of the contract. Ford Credit did not know to the contrary when it acquired the obligation.

WHEREFORE, defendant Ford Motor Credit Company prays that plaintiff's Complaint be dismissed and it have and recover judgment for its costs and disbursements incurred herein.

/s/ Dezendorf, Spears, Lubersky & Campbell
Herbert H. Anderson
John M. Berman

DEZENDORF, SPEARS,
LUBERSKY & CAMPBELL
Herbert H. Anderson
John B. Berman
Attorneys for Defendant
Ford Motor Credit Company

(Affidavit of Mailing Omitted in Printing)

64-65

OREGON AUTOMOBILE RETAIL INSTALMENT CONTRACT DATE 6-24-75

Buyer (and Co-Buyer) - Name and Address (Include - County and Zip Code)
Donna M. Eaton
239 S.E. Ankeny Circle
Portland, oregon 97233

ACCOUNT NO.
Seller - Name and Address Bud Meadows Mazda
1818 SE. 82
Portland, Oregon 97213

Buyer (which means the undersigned Buyers and Co-Buyers, jointly and severally) having been quoted both a deferred payment price and a lesser cash price hereby purchases from Seller on a time price basis, upon the terms and conditions set forth on the face and reverse sides hereof, the following property (hereinafter called the "Property") delivery and acceptance of which in good order hereby are acknowledged by Buyer.

New or Used	Year and Make	Series	Body Style	No. Cyl.	¾ Truck Ton Capacity	Manufacturer's Serial Number	Use For Which Purchased
USED	1973 CHEVROLET	CAMERO				#1S87H3N147240	☐ Personal ☐ Agriculture ☐ Business

INCLUDING:
☐ Radio ☐ Air Conditioner ☐ Automatic Transmission ☐ Power Steering ☐ Power Brakes ☐ Power Seats ☐ Power Windows ☐

DESCRIPTION OF TRADE IN

(Year and Make) (Gross Allowance)
(Serial Number) (Amount Owing)

OPTIONAL INSURANCE

Buyer authorizes Seller to obtain the following insurance coverages:

(a) Physical Damage Insurance: Coverages checked below for a term of ___ months (or for such shorter term as the insurer to whom Seller shall apply therefor will provide for the amount included herein) from the date hereof covering accidental physical damage to the Property based on actual cash value at the time of loss not to exceed policy limits payable to Buyer or Seller as interests may appear:

☐ Comprehensive ☐ Fire-Theft & Combined Additional Coverage ___ (a)
☐ $___ Deductible Collision ☐ Towing & Labor Costs ($25.00 Limit) ___

(b) Credit Life Insurance on the life of Donna EATON (Insured Person) for the term of this contract.
☐ Provided under Ford Life Insurance Company's Group Policy No. 2200 in accordance with the "Credit Life Insurance Eligibility" section below.
Insured Buyer's Age ___
☐ Provided by AIA in accordance with the separate Application, Notice, Certificate or Policy delivered to Buyer this date. 67.46 (b)

(c) Credit Accident and Health or Disability Insurance on Donna EATON (Insured Person) for the term of this Contract.
Provided by AIA in accordance with the separate Application, Notice, Certificate or Policy delivered to Buyer this date. 141.25 (c)

(d) Other Optional Insurance ___ (d)
Provided by ___
for a term of ___ months.
Total Cost of Optional Insurance 208.71

NOTICE TO BUYER: (1) You are not required to obtain the Credit Life and/or Credit Accident and Health or Disability Insurance for which a charge is indicated above and such is not a factor in the Seller's approval of this credit. (2) You have the right to choose the person through whom the Physical Damage Insurance required under this contract is to be obtained. ACKNOWLEDGING the foregoing, BUYER requests and authorizes SELLER to obtain such insurance coverage for which an amount is included above.

Buyer's Signature Donna M. Eaton Date 6/24/75

Cost of insurance to be included only if signed by each insured Buyer and dated.

LIABILITY INSURANCE COVERAGE FOR BODILY INJURY AND PROPERTY DAMAGE CAUSED TO OTHERS IS NOT INCLUDED.

CREDIT LIFE INSURANCE ELIGIBILITY

Credit life insurance and/or Ford Life Insurance Company's Group Policy No. 2220C is available only on the life of one natural person who is obligated to make payments under this retail instalment instrument and who is under the age of 66 on the date hereof. Benefits will be limited to a refund of premiums if there is no person eligible for such insurance, or if death results from suicide within two years from the date hereof. For details see Notice of Proposed Group Credit Life Insurance on reverse side of Buyer's Copy.

The foregoing contract hereby is accepted by the Seller and assigned to Ford Motor Credit Company in accordance with the terms of the Assignment set forth on the reverse side hereof.

Seller Bud Meadows Mazda
By ___ Title Business Manager

DETAILS OF TRANSACTION

(1) Cash Price		3515.00 (1)
Cash Down Payment	617.00	Trade Equipment
Trade-In (See Opposite)		100.00
(2) Total Down Payment		717.00 (2)
(3) Unpaid Balance of Cash Price (Difference between Items 1 & 2)		2798.00 (3)
(4) Other Charges		
Optional Insurance (See Opposite)	208.71	
Official Fees		
Taxes (Not Included in Cash Price)		
License, Title & Registration Fees	200.75	
Total Other Charges		270.94 (4)
(5) Unpaid Balance - Amount Financed		3068.94 (5)
(6) FINANCE CHARGE		722.10 (6)
(7) ANNUAL PERCENTAGE RATE 14.55 %		(7)
(8) Total of Payments (Sum of Items 5 & 6)		3791.04 (8)
(9) Deferred Payment Price (Sum of Items 1, 4 & 6)		4506.04 (9)

(10) Payment Schedule: Buyer hereby agrees to pay to Seller the Total of Payments (Item 8 above) in 36 monthly instalments of $ 103.36 each and one final instalment of $ ___ on the 9th day of each month commencing 8-9-1975 or, if no date is specified, one month after the date of this contract, plus a pickup payment of $ 100.00 on which no finance charge is assessed, due on 7-9-1975

(11) Balloon Payment(s) $ 100.00 on 7/1976
(Insert amount of each payment that is more than twice the amount of any otherwise regularly scheduled equal payment)
A balloon payment may be refinanced only upon such terms and conditions as the then parties to this contract may agree as of its due date.

(12) Delinquency Charges: Buyer hereby agrees to pay a delinquency charge on each instalment in default for more than 10 days in the amount of 5% thereof or $5.00, whichever is less, plus such expenses incurred by Seller in effecting collection hereunder as may be allowed by law.

(13) Security Interest: Seller shall have a security interest under the Uniform Commercial Code in the Property (described above) and in the proceeds thereof to secure the payment in cash of the Total of Payments and all other amounts due or to become due hereunder.

(14) Prepayment Rebate: Buyer may prepay his obligations under this contract in full at any time prior to maturity of the final instalment hereunder, and, if he does so, shall receive a rebate of the unearned portion of the Finance Charge computed under the sum of the digits method after first deducting an acquisition fee of $15.00. No rebate will be made if the amount is less than $1.00.

(15) Additional Terms and Conditions: The additional terms and conditions set forth on the reverse side hereof are a part of this contract and are incorporated herein by reference.

NOTICE TO THE BUYER

Do not sign this contract before you read it or if it contains any blank space, except that if delivery of the vehicle is to be made to you after this contract is signed, the serial number or other identifying information and the due date of the first instalment may be filled in at the time of delivery.
You are entitled to a copy of this contract.
You have the right to pay off in advance the full amount due and to obtain a partial refund of the finance charge.

Buyer acknowledges receipt of a true and completely filled in copy of this
RETAIL INSTALMENT CONTRACT

Buyer Donna M. Eaton
Buyer Donna M. Eaton

FOR SELLER'S USE ONLY

INSURANCE COVERAGE (TO BE COMPLETED, IF PHYSICAL DAMAGE INSURANCE IS NOT INCLUDED IN THE ABOVE CONTRACT.)
NAME OF INSURANCE AGENT ___ TELEPHONE NO. ___
ADDRESS OF INSURANCE AGENT ___
NAME OF INSURANCE COMPANY ___ POLICY NO. ___
CHECK COVERAGES
☐ Comprehensive ☐ $___ Deductible Collision ☐ Fire Theft & Combined Additional Coverage
SALESMAN ___ (Please Print or Type Name)

FORM AR-TI 11236 Printed Bottom Line Must Be Inked
FOR SELLER'S USE ONLY | KEY-1 | KEY-2 | CUS | INT |
CONSUMER PAPER
ORIGINAL

64-65

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Page 4 - ANSWER OF FORD MOTOR CREDIT COMPANY TO PLAINTIFF'S AMENDED COMPLAINT

ADDITIONAL TERMS AND CONDITIONS

16. ASSIGNMENT
The original Seller may assign this contract and his reserves and acquire all of his interest in the contract and the Property and shall be entitled to all the rights and privileges of Seller hereunder. After Buyer receives notice of any such assignment, Buyer shall make all payments hereunder directly to the Seller hereof and the original Seller shall not be the agent of the holder for transmission of payments or otherwise. Buyer shall not transfer or otherwise dispose of any interest in the contract or the Property.

17. USE OF PROPERTY - WARRANTIES
Buyer shall keep the Property free from all encumbrances, and except that any be paid by Seller in release or discharge thereof shall be paid by Buyer to Seller forthwith upon demand with interest at the highest lawful contract rate. Buyer shall not use the Property illegally, improperly or for hire (unless stated herein) and shall not remove the Property from the county of his residence without the written permission of Seller. No representation, promise or warranty, express or implied, has been made with respect to the merchantability, suitability or fitness for purpose of the Property or otherwise unless the same is endorsed hereon in writing or is contained in a separate written instrument signed by the original Seller. Buyer will settle directly with the original Seller all claims concerning the Property or its use or operation.

18. RISK OF LOSS - INSURANCE
The Property shall be at Buyer's risk. Buyer shall obtain and maintain at his own expense for so long as any amount remains unpaid hereunder insurance protecting the interests of Buyer and Seller against loss, damage or destruction of or to the Property in such forms and amounts as Seller may require. The issuance of charge for insurance herein shall not relieve Buyer of such obligation nor gate authorize Seller to attempt to obtain the requested coverages on Buyer's behalf through an authorized agent; provided, if Seller is unable to obtain the requested coverages for the term indicated for the amount included herein, Seller may (i) obtain such coverages for such term, if any, as the insurance carrier to whom Seller shall apply therefor will provide for such amount, or (ii) credit such amount to the final maturing instalment hereunder in inverse order of maturity or as otherwise required by law.
If Buyer fails to obtain or maintain such insurance, or fails to furnish satisfactory evidence thereof upon request, Seller may, but shall not be required to, and without prejudice to his rights hereunder if he does not obtain such insurance protecting solely the interests of Buyer and Seller or the interests of Seller only to such event, Buyer agrees to reimburse Seller for the cost thereof forthwith upon demand together with interest thereon at the highest lawful contract rate.

19. DEFAULT
Time is of the essence of this contract. In the event Buyer defaults in any payment, or fails to observe or maintain the insurance required hereunder, or fails to comply with any other provision hereof, or a proceeding in bankruptcy, receivership or insolvency shall be instituted by or against Buyer or his property, or Seller deems the Property in danger of seizure or confiscation, or Seller otherwise reasonably deems the indebtedness or the Property insecure, Seller shall have the right to declare all amounts due or to become due hereunder to be immediately due and payable and Seller shall have all the rights and remedies of a Secured Party under the Uniform Commercial Code, including the right to repossess the Property wherever the same may be found with free right of entry, and to recondition and sell the same at public or private sale. Buyer request Buyer shall deliver the Property to Seller at a place designated by Seller. Seller shall have the right to retain all payments made prior to repossession and Buyer shall remain liable for any deficiency to the extent permitted by law. Any personalty in or attached to the Property when repossessed may be held by Seller without liability and Buyer shall be deemed to have waived any claim thereto unless written demand by certified mail is made upon Seller within 24 hours after repossession. Buyer agrees to pay reasonable attorneys' fees (15% if permitted by law) and other expenses incurred by Seller in effecting collection, repossession or resale hereunder. Seller's remedies hereunder are in addition to any given by law and any so enforced successively or concurrently. Waiver by Seller of any default shall not be deemed a waiver of any other default.

20. GENERAL
No transfer, removal, extension or assignment of this contract or any interest hereunder, and no loss, damage or destruction of or to the Property, shall release Buyer from his obligations hereunder. This contract contains the entire agreement between the parties and no conditions hereof shall be valid in any event, and Buyer expressly waives the right to rely thereon, unless made in writing signed by an officer of Seller. Any provision of this contract prohibited by applicable law shall be ineffective to the extent of such prohibition without invalidating the remainder of this contract. This contract shall be governed by the laws of the state in which the original Seller is located as shown on the face of this contract.

GUARANTY

For Value Received, each of the undersigned guarantors, jointly and severally, guaranties the prompt and unconditional payment, performance and discharge of all Buyer's obligations under the within contract and covenants that in the event of default in any of such obligations hereunder, by any reason thereof the full amount remaining unpaid thereunder together with a reasonable attorney's fee (15% of the amount then due, or if prohibited, the greatest permitted by law) if placed with an attorney for collection. The liability of undersigned shall not be affected by any extension, renewal or other change in time of payment of the said contract, or any change in the manner, place or terms of payment thereof, or the release, settlement or compromise with any party liable for the payment thereof, or the release or non-perfection of any security thereunder. The holder of the within contract shall not be required to exhaust its recourse against Buyer or any other person or any security the holder may at any time have before being entitled to payment from the undersigned hereunder. Each of the undersigned guarantors hereby waives notice of the acceptance of this guaranty, and of demand, and protest and notices of non-payment and dishonor, and any other demands and notices required by law, and waives all setoffs and counterclaims.

Guarantor ___ Address ___
Guarantor ___ Address ___
Guarantor ___ Address ___

ASSIGNMENT

The Seller named on the face of this contract sells, assigns, and transfers to Ford Motor Credit Company, (hereinafter called "Ford Credit") his, its or their entire right, title and interest in and to the within contract and the Property described therein and authorizes Ford Credit to do every act and thing necessary to collect and discharge all obligations arising out of or incident to said contract and assignment. In order to induce Ford Credit to accept assignment of the contract, the Seller warrants that: the contract, and guaranty if any, are genuine, legally valid and enforceable and arose from the sale of said Property; said Property is as represented to the Buyer named therein who was audited both a deferred payment price and a lesser cash price; the within contract was originally in all respects and Seller made all disclosures required by law prior to the execution thereof by Buyer; the Buyer is not a minor, has capacity to contract and paid the down payment stated in the contract with his own funds; all statements made by or on behalf of the Buyer and furnished to Ford Credit by the Seller are true to the best of the Seller's knowledge and belief, and the Seller has no knowledge of any fact that would impair the validity or value of the contract; title to said Property is vested in the Seller free of all liens and encumbrances and the Seller has the right to assign said title; and a certificate of title to said Property showing a lien or encumbrance for the benefit of Ford Credit or the Seller has been or will be applied for forthwith if permitted by law. If there is any breach of any of the foregoing warranties, without recourse to the Seller's knowledge or lack of knowledge with respect thereto or Ford Credit's reliance thereon, the Seller hereby agrees unconditionally to purchase said contract from Ford Credit, upon demand, for the full amount then unpaid whether said contract shall then be, or not be, in default. Seller further agrees that in event Buyer or any other person makes a claim against Ford Credit alleging facts which, if true, would constitute a breach of any of the foregoing warranties, Seller shall assume the defense of such claim and shall indemnify and save Ford Credit harmless from all cost and expenses arising therefrom. In addition, this assignment includes the provisions of the paragraph below, the first of which is applicable unless that paragraph below has been initialed by Seller, this assignment shall include the provisions of the paragraph below and initialed by Seller, but not both. The liability of the Seller shall not be affected by any extension, renewal or other change in the time of payment of the said contract or in the manner, place or terms of payment thereof, or the release, settlement or compromise of or with any party liable for payment thereof or the release or non-perfection of any security thereunder. Ford Credit shall not be bound to exhaust its recourse against the Buyer or any other person or any security Ford Credit may at any time have before being entitled to payment from the Seller hereunder. The Seller waives notice of the acceptance of this assignment and notices of non-payment and non-performance of the contract and any other notices required by law and waives all setoffs and counterclaims. This assignment shall become effective upon delivery of the within contract to Ford Credit or upon Ford Credit's payment of the purchase price thereunder whichever first occurs.

Initial ☐ "WITHOUT RECOURSE" The assignment of said contract is and shall be without recourse against the Seller, except as otherwise provided by the terms of the Ford Motor Credit Company Retail Plan in effect at the time this assignment is accepted.

Initial ☒ "REPURCHASE" The Seller guarantees payment of the full amount remaining unpaid under said contract, and covenants if default be made in payment of any instalment thereunder to pay the full amount then unpaid to Ford Credit upon demand, except as otherwise provided by the terms of the Ford Motor Credit Company Retail Plan in effect at the time this assignment is accepted.

Initial ☐ "LIMITED REPURCHASE" The Seller guarantees payment of the full amount remaining unpaid under said contract, and covenants, if default be made in payment of any instalment thereunder to pay the full amount then unpaid to Ford Credit, upon demand, except as aforesaid provided by the terms of the Ford Motor Credit Company Retail Plan in effect at the time this assignment is accepted; provided, that if the Buyer satisfactorily pays each of the first ___ instalments coming due under the within contract, this assignment shall thereafter be without recourse against the Seller, except as otherwise provided by the terms of the Ford Motor Credit Company Retail Plan in effect at the time this assignment is accepted.

Initial ☐ "PARTIAL GUARANTY" Notwithstanding the terms of the Ford Motor Credit Company Retail Plan, the Seller unconditionally guarantees payment of the full amount remaining unpaid under said contract, and agrees to purchase said contract from Ford Credit upon demand for the full amount then unpaid whether said contract shall then be, or not be, in default, provided, however, at the time of any such demand Ford Credit, Seller may, at his election, pay to Ford Credit the sum of $ ___ in consideration of being released from such guaranty obligation, and in such event, the assignment of said contract is without recourse against the Seller, except as otherwise provided by the terms of the Ford Motor Credit Company Retail Plan in effect at the time this Assignment is accepted.

Initial ☐ "FULL GUARANTY" Notwithstanding the terms of the Ford Motor Credit Company Retail Plan, the Seller unconditionally guarantees payment of the full amount remaining unpaid under said contract, and agrees to purchase said contract from Ford Credit, upon demand, for the full amount then unpaid whether said contract shall then be, or not be, in default.

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BEST COPY AVAILABLE

TESTIMONY OF WILLIAM F. BELLISARIO

(Admitted into Record on May 24, 1977—Transcript at 19; Filed July 5, 1977)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

He is the branch manager of the Portland branch of Ford Motor Credit Company. He has been with Ford Credit for fifteen years, in virtually every position involved at the branch level.

Ford Credit supplies financing to various automobile dealers. It does so by making capital loans and inventory loans, and by purchasing contracts from such dealers, or any combination of the three.

With respect to the purchase of contracts from dealers, Ford Credit has procedures for purchasing contracts. It advises the dealers as to the standards for acceptable contracts, but it reserves the right to refuse any particular contract. In fact, Ford Credit refuses a substantial number of contracts, although the percentage is not generally very large. In any month it rejects outright between three and eight percent of the contracts tendered to it for purchase.

All the negotiable terms of this transaction were determined totally independent of Ford Credit. Those terms are the price, down payment, interest rate, length of contract, amount of monthly payment, insurance, and the like. According to Ford Credit's files, Ford Credit had no knowledge of this transaction until the contract was tendered after it was executed by the dealer and plaintiff.

Although most of the contracts purchased by Ford Credit are on contract forms prepared and supplied

by Ford Credit to the dealers with whom it has a continuing business relationship, on occasion it buys contracts on forms supplied to the dealer by other financing institutions. Along with the tendered contract a credit statement is required, and Ford Credit supplies forms for obtaining the requested information to the dealer also. However, some dealers use their own forms regardless, and some dealers use multiple forms. Not infrequently, forms not supplied by Ford Credit are tendered with the contract.

The contract in this case was not purchased by Ford Credit until July 7, 1975, which is nine days after the date of the contract. Prior to that, Ford Credit had no rights and no obligations. As shown on the contract, the contract at that time had the name and address of the seller in the upper right-hand corner. If the copy given to plaintiff was not complete, Ford Credit had no knowledge of its incompleteness.

In the normal course, within a week after a contract is purchased, Ford Credit sends to the purchaser a payment book together with a letter advising the purchaser of its purchase of the contract. Also, at the time of purchase Ford Credit reviews the contract to determine if it complies with Truth-in-Lending. A correction notice was sent to Donna Eaton on July 8, 1975, the day after Ford Credit purchased her contract.

Whenever Ford Credit is prepaid, whether the prepayment is instigated by the customer or results from an acceleration by Ford Credit, the interest rebate is calculated and allowed in the exact same manner.

OPINION
(Filed June 16, 1977)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

DONNA M. EATON,

Plaintiff,

vs.

FORD MOTOR CREDIT COMPANY,
a corporation,

Defendant.

Civil No. 76-575

Richard A. Slottee
Legal Aid Service
1100 Board of Trade Building
Portland, Or. 97204,
Attorneys for Plaintiff.

Herbert H. Anderson, John M. Berman
Dezendorf, Spears, Lubersky & Campbell
800 Pacific Building
Portland, Or. 97204,
Attorneys for Defendant.

SOLOMON, Judge:

Plaintiff filed an action for $607.84 and for reasonable attorneys' fees against the defendant, Ford Motor Credit Company (Ford), asserting that Ford violated the provisions of the Truth in Lending Act and Federal Reserve Board Regulations.

An action raising many of the same issues was decided by Judge Belloni in *Milhollin v. Dee Thomason Ford and Ford Motor Credit Co., Inc.*, Civil No. 75-334 (D.Or., filed April 7, 1976). The Magistrate had found that Ford Motor Credit Co., Inc. was a

creditor of the plaintiff, rather than an assignee of the automobile dealer, and that the transaction was governed by the provisions of the Act dealing with creditors. The Magistrate also found that Ford Motor Credit Co., Inc. failed to comply with other provisions of the Act. He therefore denied Ford Motor Credit Co., Inc.'s motion for summary judgment, and he recommended that plaintiff have a judgment against Ford Motor Credit Co., Inc. Judge Belloni reviewed the file and the record, and he granted plaintiff a judgment in accordance with the recommendations of the Magistrate. Thereafter, Ford Motor Credit Co., Inc., filed a motion to modify or vacate the judgment; and, after a hearing, Judge Belloni denied the motion.

It has been the policy and practice of this Court to respect a fully considered opinion of another Judge of this Court and to follow it unless it appears that an obvious mistake has been made. I have examined the recommendations and order of the Magistrate and the opinion of Judge Belloni in *Milhollin v. Dee Thomason Ford and Ford Motor Credit Co., Inc., supra,* and I have also carefully considered the memorandum of law submitted by counsel in this case, and I find that the conclusions reached by Judge Belloni in *Milhollin* are in accord with other federal court decisions in other jurisdictions. They also are in accord with the opinion of Judge Skopil in *Woods v. Beneficial Finance Co. of Eugene,* 395 F.Supp 9 (D.Or. 1975).

Judge Belloni's holding has been appealed and is now pending in the Ninth Circuit Court of Appeals. Because of all these facts, it would be a waste of judicial time and effort for me to set forth in detail the reasons why I believe the conclusions reached by Judge Belloni should govern this case.

There is no merit in the contention that plaintiff did not purchase the automobile primarily for personal use, nor is there any merit to the other defenses asserted by Ford.

I therefore find that plaintiff is entitled to a judgment against Ford for $607.84 and for reasonable attorneys' fees of $300.00.

Dated this 16th day of June, 1975.

/s/ Gus J. Solomon
United States District Judge

FINDINGS OF FACT AND CONCLUSIONS OF LAW

(Filed August 12, 1977)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

DONNA M. EATON,

Plaintiff,

vs

FORD MOTOR CREDIT COMPANY, a corporation,

Defendant.

CIVIL NO. 76-575

FINDINGS OF FACT

1. This action was brought under the provisions of the Truth In Lending Act, 15 U.S.C. §1601 et seq., to recover statutory damages and attorney fees because of the defendant's violations of the Act and Federal Reserve Board Regulation Z, 12 C.F.R. §226.1 et seq. The court has jurisdiction of the action pursuant to §130(e) of the Act, 15 U.S.C. §1640(e).

2. Bud Meadows Mazda is in the business of selling automobiles and arranged for Ford Motor Credit Company to extend consumer credit to its customers to finance the purchase of automobiles.

3. Ford Motor Credit Company is a corporation engaged in the business of financing automobile purchases.

4. Plaintiff purchased an automobile from Bud Meadows Mazda for personal, non-business purposes.

5. The purchase contract was assigned by Bud Meadows Mazda to Ford Motor Credit Company simultaneously with execution, and did not:

(a) clearly identify Ford Motor Credit Company as a creditor on the face of the contract;

(b) disclose an acceleration clause on the face of the contract;

(c) clearly describe or identify the type of security interest retained; and

(d) provide the plaintiff with a duplicate of the contract.

CONCLUSIONS OF LAW

1. Ford Motor Credit Company violated the provisions of the Truth In Lending Act, 15 U.S.C. §1601 et seq., and Federal Reserve Board Regulation Z, 12 C.F.R. §226.1 et seq.

2. Plaintiff is entitled to damages from Ford Motor Credit Company of $1,000 and reasonable attorney fees of $300.

3. The Court has jurisdiction of the action pursuant to §130(e) of the Act, 15 U.S.C. §1640(e).

Dated August 12, 1977.

/s/ Gus J. Solomon
United States District Judge

JUDGMENT
(Filed and Entered August 12, 1977)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

DONNA M. EATON,

Plaintiff,

vs

FORD MOTOR CREDIT COMPANY, a corporation,

Defendant.

CIVIL NO. 76-575

Based upon the record,

IT IS ADJUDGED AND ORDERED that plaintiff Donna M. Eaton have and recover from defendant Ford Motor Credit Company the sum of $1,300.

DATED this 12th day of August, 1977.

/s/ Gus J. Solomon
Judge U.S. District Court

OPINION

United States Court of Appeals, Ninth Circuit

(Decided December 28, 1978;
Reported at 588 F.2d 753)

Printed at page 42 of this Joint Appendix.